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OFFICIAL MONTH IN REVIEW

November 1.—EARLY in the morning, the President sent wreaths to the tombs of the late President and Mrs. Manuel L. Quezon, the late President Manuel A. Roxas, the *Veteranos de la Revolución,* and the Unknown Soldier in Fort Santiago. He also ordered a complement of the presidential guard battalion to mount honor guards at the mausoleums of his late predecessors and the war heroes.

The President led the nation this day in the observance of All Saints Day. He heard mass early in the morning with his family at the Malacañang chapel.

After breakfast, the President went to his study and worked on state papers.

At about 9:30 a.m., the President received a delegation composed of laid-off security guards of the former LASEDECO which presented him with ₱1,000 as their contribution to the Liberty Wells fund drive.

The security guards, numbering 15, who had been laid off in 1952 owing allegedly to lack of funds, had filed a petition with the Court of Industrial Relations contesting their removal without just cause. The CIR ordered the reinstatement of the guards and the payment of about two years' back wages.

Accompanied to Malacañang by Onofre P. Guevarra, their lawyer, members of the delegation explained to the President that their contribution was a token of their gratitude for the justice given them under his administration. The CIR decision had been confirmed by the Supreme Court.

The President today created a committee to determine the liability of Col. Victor H. Dizon, former acting civil aeronautics administrator, in connection with the loaning of the parts of the dismantled tower at the Puerto Princesa airfield to the Bolinao Broadcasting Corporation. Named to the committee were Brig. Gen. Pelagio Cruz, airforce chief, chairman; and Col. Andres Cruz and Urbano B. Caldoza, CAA administrator, members.

At the same time, the President directed Executive Secretary Fred Ruiz Castro to recover the tower parts from the Bolinao Broadcasting corporation which had been loaned reportedly in violation of the law.

The dismantling of the tower at the Puerto Princesa airfield and the loaning of the dismantled parts to the Bolinao Broadcasting Corporation had been investigated. The investigation revealed that the tower, upon verbal instructions of Augusto Paraiso, chief of the airports division, had been dismantled by Hector G. Fernando sometime in July 1952. The dismantled parts consisting of 168 structural members and 18 accessories were shipped to Manila by Fernando on July 29, 1952, and delivered to Juan Perez of the Civil Aeronautics Administration.

On August 17 and 18, 1953, upon instructions of former Acting Administrator Dizon, the dismantled parts were delivered to Harry T. Channy, Jr., of the Bolinao Broadcasting Corporation.

It was revealed that the memorandum receipts covering the dismantled articles had a notation saying that the Bolinao Broadcasting Corporation was "borrowing the above articles to see if the missing parts of the tower they bought from the above office can be found in them. Parts which cannot be used in the tower will be returned to said office."

The CAA investigation report said further that the notation on the memorandum receipts was a misrepresentation of facts because the borrowed equipment formed parts of the tower dismantled in the Puerto

Princesa airfield and hence "cannot be the missing parts of the tower they bought from this office."

The report moreover said that it was also a misrepresentation to say that the Bolinao Broadcasting Corporation had bought a tower from the CAA. The report added that the corporation had only leased from the Board of Liquidators a "radio beacon station (HHW)" the legality of which has been the subject of various investigations.

November 2.—STARTING work early this morning with Executive Secretary Fred Ruiz Castro on state papers, the President appointed six district judges, two solicitors, and three assistant provincial fiscals.

The President also approved the salary promotion of City Fiscal Eugenio Angeles, First Assistant City Fiscal Atanacio R. Ombac, and Second Assistant City Fiscal Gregorio T. Lantin, all of Manila.

Appointed district judges were Francisco Carreon for the 8th judicial district to preside over the CFI of Laguna and San Pablo City branch; Olegario Lastrilla for the 13th judicial district to preside over the CFI of Samar and Calbayog City (3rd branch); Lorenzo Garlitos for the 13th judicial district to preside over the CFI of Ormoc City and Tacloban City branch; Modesto Ramolete for the 15th judicial district to preside over the CFI in Surigao; Pedro C. Quinto for the 1st judicial district to preside over the CFI of Isabela (2nd branch); and Wenceslao Fernan for the 16th judicial district to preside over the CFI of Davao, replacing Judge Corazon Agrava, resigned.

Appointed solicitors were Eriberto D. Ignacio and Troadio T. Quiazon, Jr.

Perfecto Amadora was appointed fifth assistant fiscal of Cebu City, and Vicente G. Ericta and Rosalio Segundo were named first and second assistant provincial fiscals, respectively, of Ilocos Norte.

About 9 a.m., the President received Maj. Gen. Chester E. McCarty, outgoing commander of the 315th Air Division (Combat Cargo), Far East Air Force, stationed in Tokyo, who called to pay his respects preparatory to his return to Washington for re-assignment. Gen. McCarty was accompanied by Mrs. McCarty and Brig. Gen. William L. Lee, commander of the 13th U. S. Airforce stationed in Clark Field, Pampanga.

The President today ordered the release of ₱70,000 for the improvement of the waterworks system of Baguio which is being rushed for the dry reason. He directed Budget Commissioner Dominador Aytona to release the amount following a request by Baguio Mayor Alfonso Tabora, who reported to the Chief Executive on the progress of the waterworks project in the summer capital.

Impressed by the various reports on public works projects brought to him by several provincial and municipal officials who called on him, the President also approved the release of ₱11,000 for Candaba and ₱60,000 for Floridablanca, Pampanga. He likewise directed Undersecretary of Public Works Juan Paraiso to study the flood control project in Guagua, Pampanga.

The President received a large delegation from Pampanga headed by Governor Rafael Lazatin and Mayors Anastacio Gallardo of Candaba and Dominador Songco of Floridablanca.

A delegation from Bulacan composed of Gov. Alejo Santos, Rep. Erasmo Cruz, and Pandi Mayor Mamerto Bernardo also reported to the President that most of the projects in their province for which the Chief Executive had released money were almost completed.

The President awarded a trophy as a prize for the municipality that gave him the highest percentage of votes in the 1953 elections. The winning town was Pagalungan, Cotabato. The trophy was received by Datu Ugtug Matalam, former governor of Cotabato, who was accompanied by Sen. Tomas Cabili, Rep. Domocao Alonto, and ex-Senator Salipada Pendatun. Castillejos, Zambales, being the President's hometown, was dis-

qualified from the contest. The trophy had been purchased and offered in this competition when the President was still a candidate.

Another trophy was donated by the President for the winner of the nation-wide food production contest conducted by the Philippine Boy Scouts during the celebration of Boy Scouts Week which started November 1. Those who received the trophy from the President for eventual awarding were Demetrio Santos, chairman on production day of the Boy Scouts Week, Victor Hernandez, Fortunato Gupit, and Manuel Sumulong, members.

Gov. Vicente Constantino of Quezon led a delegation of provincial officials who invited the President to attend the unveiling of a giant statue of the late President Manuel L. Quezon in Lucena on November 30.

Col. H. E. Bullis, a noted American lecturer and teacher here for a three-month lecture tour before universities and civic organizations, paid his respects to the Chief Executive. Col. Bullis, who was accompanied by Miss Helen Benitez of the Philippine Women's University and Mrs. Fanny Aldaba-Lim, had been in the Philippines for four years after World War I.

Another American who paid his respects to the President was W. Gilstrap, vice-president of the Wells Fargo Bank. He was accompanied by Jesus Jacinto, manager of the Security Bank.

The presidents of civic associations in Quirino district, accompanied by Rep. Serafin Salvador, called on the President and presented a resolution requesting the lowering of rentals in the government housing project. The President told them their request was under study.

Rep. Ubay of Zamboanga del Norte handed to the President a check for ₱309 for the Liberty Wells fund. The amount was collected by Provincial Board Member Antonio Adasa.

Rep. Antonio Raquiza of Ilocos Norte accompanied Mayor Felicisimo Aquino and the municipal councilors of Piddig who asked the President for artesian wells and an irrigation system.

The President received callers until past noon. Other callers included Sen. Justiniano Montano, Reps. Felix Garduque of Cagayan, Angel Castaño of Manila, and Justino Nuyda of Albay, and Commodore Jose M. Francisco of the Philippine Navy.

In the evening the President, in an impassioned plea to the members of the Philippine College of Surgeons, appealed that they dedicate themselves to what he called "meritorious public service."

The members of the association called on the President to pay their respects in the afternoon after the termination of their week-long convention. They were accompanied to Malacañang by Health Secretary Paulino Garcia and officers of the association. Dr. Fortunato Guerrero, president of the association, could not come but Col. Benvenuto Diño, vice-president, led the officials and members of the association.

In impromptu but spirited remarks made by the President, he lauded the association for its enthusiasm in cooperating with the government's program of rural health improvement. He said that he was particularly elated by the resolution of the Pangasinan Medical Association offering their free services to the rural areas and to certified indigent patients. According to the resolution, any certified indigent patient could call on any of the member physicians for medical services free.

The President then said that he was going to give public recognition to such meritorious public service by awarding medals to the public spirited citizens.

He praised Secretary Garcia for his splendid work in the Department of Health.

The President's impromptu talk was touched off by Dr. Luis Santayana, who reminded the President about the attempted purchase by Dr. Eliodoro Congco of a piece of land from the People's Homesite and Housing Corporation at a price of ₱3 per square meter. The President flared anew when he was reminded of the deal which he said he had never authorized.

The President reiterated what he time and again had said—that he had never authorized the sale of the PHHC land at P3 per square meter.

The President saw in the transaction an attempt to pull a "fast one" on the Government. He said that he had been informed by PHHC Acting General Manager Vicente Orosa that prior to the visit of Tombokon and Congco to the President, Congco had already offered a price of P4 per sequare meter.

The President said that the PHHC board should have acted more judiciously and should have first verified if the alleged presidential order was true because according to the President it had been his practice to put in writing anything he wanted done by government officials.

He also mentioned a recent incident in which he had impounded the onions imported by the National Onion Growers Cooperative Association when he discovered that the majority of the members of the board of directors were not genuine onion growers. The President said he would never tolerate such "fast" deals in the Government.

The surgeons present expressed their approval of the President's action on these two cases and pledged their support to him.

The President entertained his guests at cocktails in the ceremonial hall of Malacañang.

When asked by newsmen after the cocktails if he had any comment to make on press reports about reparations from Japan, the President said he had nothing to say on the matter. Asked if he had anything to say on the retirement of UP President Vidal A. Tan, the President said that he planned to confer with Dr. Tan sometime within the week and during the conference he most probably would discuss the findings of the Castro committee which had investigated the hazing in fraternities and sororities in the State University .

November 3.—PRESIDENT MAGSAYSAY began the day early this morning with a long conference with Executive Secretary Fred Ruiz Castro during which he worked on pending state papers. During the conference, the President issued three proclamations:

(1) Proclamation No. 88, designating the period from November 5 to December 18 this year for the national fund campaign of the Liberty Wells Association;

(2) Proclamation No. 90, reserving for settlement purposes under the administration and disposition of the NARRA a certain parcel of public lands consisting of 8,500 hectares situated in the municipalities of Tinambac and Siruma, Camarines Sur; and,

(3) Proclamation No. 89, reserving for building site purposes of the Bicol School of Fisheries some public lands in Tabaco, Albay.

In proclaiming the period for the Liberty Wells fund campaign, the President called upon all residents, firms, and organizations all over the country to support the drive. He authorized all government officials and school authorities and teachers to accept fund-raising responsibilities to give the campaign active support and leadership in their respective communities.

The President also ordered this day an administrative investigation of the case of Mayor Engracio Santos of San Juan, Rizal, who had been convicted of rape by the court of first instance but was subsequently acquitted by the Court of Appeals owing to a technicality.

The President, upon the insistence of the offended party, created a committee this morning to look into the case of Mayor Santos, the dismissal of whose case by the appelate court had been based on the failure of the offended party to sign the complaint as required by existing laws on crimes against chastity. The probe committee is composed of Judge Roman Cruz, chairman; and Judge Jesus Paredes and Enrique Fernando, members.

The President also issued this morning Administrative Order No. 70, relieving Hipolito Buendia as register of deeds of Bulacan for accepting

for registration deeds of conveyance of real property without requiring the presentation of evidence of payment of realty taxes on the property and the submission of sufficient copies of these instruments as required by law.

It appeared that on August 18, 1950, Buendia had cancelled the Transfer Certificate of Title No. T-2599 in the name of Concepcion R. Lim de Planas covering property situated in Norzagaray, Bulacan, and issued in lieu thereof TCT No. T-5907 in favor of Bienvenido Angeles and others, without first requiring the submission of evidence showing that the property involved was not delinquent in the payment of taxes as required by Republic Act No. 456.

On March 6, 1954, Buendia again cancelled TCT No. T-5907 and issued in its stead TCT No. T-12215 in favor of Carmen Planas and others upon the presentation of an official receipt as evidence of supposed payment of realty taxes on the property. It was discovered, however, that the official receipt was for payment of taxes due on another property of Carmen Planas located in San Juan del Monte, Bulacan.

Buendia, in his defense, had stated among other things that he was not aware of the provisions of Republic Act No. 456, which had been approved only on June 8, 1950. This explanation was considered unsatisfactory as he was presumed to know the laws pertinent to his duties.

Buendia was found grossly negligent in not taking the routine trouble of reading the official receipt which, on its face, clearly showed that it referred to property other than that covered by the title being submitted for registration.

Buendia not being a lawyer and Bulacan being a big and important province, the President felt constrained to relieve him from his post "in the interest of public service and in order to give way to a more qualified person" without prejudice, however, to his reinstatement in the government in some other capacity, if qualified, and to his receiving whatever rights and benefits he might be entitled under existing laws.

Three Hollywood actors called to pay their respects following their recent arrival in Manila. The actors, now on location on one of the small islands in Pangasinan for a new movie, *The Hunted,* are David Brian, Marsha Hunt, and nine-year old Hugh Corcoran.

During the call, the President expressed himself in favor of more Hollywood movies filmed in the Philippines in order to give the local movie industry an opportunity to learn Hollywood methods and techniques as well as to stimulate employment. He said he would look into the advisability of relaxing Central Bank regulations in order to permit remittances to the United States of a greater percentage of the profits realized from Hollywood movies filmed in the Philippines and shown in local theaters.

The American stars were accompanied to Malacañang by Joe Shaeftel, producer-director; Steven Bass, sound engineer; Byron Kane, dialogue director; Fleet Southcott, cameraman; and Sam Williamson, dog trainer who brought along his puppy *Candy,* which will appear in the new movie.

A delegation of Boy Scouts officials headed by Jorge Vargas, BSP president, presented the President with a Special Thanks Badge for the interest he had shown in the furtherance of the scout movement in the Philippines and the assistance extended by the government in making the National Boy Scouts Jamboree held last April in Quezon City, a success. The medal was pinned by Education Secretary Gregorio Hernandez, Jr., BSP vice-president.

Other callers included L. A. Petersen, P. L. Douglas, W. J. W. Reid, and G. H. Fielder, all executives of the Otis Elevator Company; Rev. Dr. Joseph Prunskis, editor of the Lithuanian daily, *Draugas,* in Chicago; Senator Emmanuel Pelaez; Reps. Francisco A. Perfecto of Catanduanes and Esteban Bernido of Bohol; and Govs. Arsenio Lugay of Tarlac and Manuel M. Calleja of Albay.

The President in the evening received visiting members of the International College of Surgeons.

William Goldman, who is the only lay member of the College, brought to the President a letter from Governor John S. Fine of Pennsylvania, who sent his personal greetings to the Chief Executive. Goldman also brought an authograph picture of Independence Hall, one of America's national shrines, from Philadelphia Mayor Joseph S. Clark, Jr.

Dr. Moses Pehrend, one of the visiting surgeons, extended to the President greetings from two Filipino physicians, Dr. Pablo and Dr. Ang, of the Einstein Medical Center in Philadelphia. Dr. Pehrend said that Dr. Ang had returned to the Philippines while Dr. Pablo was expected to arrive soon in Manila. Maurice Casey of Universal-International accompanied Goldman and Pehrend.

The President thanked his visitors, especially for the greetings from Governor Fine and Mayor Clark, and extended his welcome to the visiting surgeons.

While the President was still busy receiving callers before the Cabinet meeting, members of the Cabinet forged a reconciliation between Agriculture Secretary Salvador Araneta and Labor Secretary Eleuterio Adevoso. Both attended the Cabinet meeting and exchanged apologies that there was nothing personal in their statements on the proposal to revise the Minimum Wage Law. Justice Secretary Pedro Tuason acted as mediator and the two Cabinet men kissed and made up.

The Cabinet, with the President presiding, took a bold step today towards blanketing the country with irrigation systems by offering to provide free cement to the nation's farmers to enable them to construct communal irrigation systems.

The President authorized the immediate release of ₱2 million to finance the purchase of cement under this program. He expressed high hopes that with this incentive, the nation's farmers will take the initiative in building communal irrigation systems to water their lands and enable them to harvest two or more crops yearly.

Only condition attached to the offer was that the plans for the irrigation system be prepared by the district engineer in the community where it will be built, and that the construction be undertaken under his supervision. The farmers will be required to contribute only their labor and the necessary gravel and sand.

The President asked Secretary of Agriculture Salvador Araneta, Secretary of Public Works Vicente Orosa, and other department heads concerned to spread the word all over the country about this government offer. Applications for free cement may be sent in by any group of farmers desiring a communal irrigation system, either directly to their district engineer or to the secretary of public works in Manila.

The President pointed out that cement is the principal and most expensive item in the construction of irrigation systems and its high cost prevents farmers from constructing communal projects. With the government's unprecedented offer, he was hopeful that irrigation projects will be built all over the country, enabling farmers to harvest more and earn more, thus increasing the entire country's productivity.

The President spent considerable time during the Cabinet meeting discussing further steps to make the Philippines self-sufficient in rice, and other problems connected with the government's rice program.

The President inquired from Secretary Araneta about his findings on his recent trip to the barrios as he explored the rice situation. Araneta replied that as of 40 days ago, the reports were to the effect that this year's rice production would be short from 15 to 20 per cent of requirements. However, he said, latest estimates he had gathered during his trip were that if there would be any rice shortage at all, it would not be more than 5 per cent of requirement needs.

The President told the agriculture secretary to intensify his department's work in helping the farmers increase their rice yield by means of disseminating latest production methods which would enable a farmer to raise as many cavans of palay per hectare as possible. The President

recalled that one Eugenio Margate of Dipolog, Zamboanga del Norte, was able to perfect a method which enabled him to produce an average of 100 cavans of palay for every hectare of land.

The President directed the Department of Agriculture and Natural Resources to do its best in informing the farmers of these most effective ways to raise their rice crops in order not only to be self-sufficient in rice but if possible to be able to export the cereal.

Also at the Cabinet meeting, the President instructed Executive Secretary Fred Ruiz Castro to direct the commissioner of civil service to apply the stiffest penalties prescribed by law against erring public officials and employees. The President handed down this order after hearing complaints from his department secretaries against laxity by the Bureau of Civil Service in the punishment of erring officials and employees.

In this connection, Budget Commissioner Dominador Aytona, chairman of the Civil Service Board of Appeals, recalled that in four or five cases recently decided by his group, erring public servants who had appealed decisions of the commissioner of civil service, instead of receiving a reduction of their penalties, were dismissed from the service. The President said he did not want responsible officials hampered or blocked in their effort to clean up the government by laxity on the part of the Civil Service Commission.

The President also ordered Commissioner of Customs Edilberto David and Acting Customs Collector Rogaciano Millares, whom he had summoned to the Cabinet meeting, to put a stop to racketeering by customs personnel among incoming passengers in the piers, especially tourists. The President said he had received numerous reports of this practice and wanted it stopped, especially since it is bound to discourage tourism. He said the reports were that customs employees mulcted tourists even for the most basic services performed in the normal course of their duties.

David denied that customs personnel were involved in this racket and said they may have been perpetrated by other personnel, such as brokers' agents posing as customs officials. The President, to prevent confusion in the identity of personnel meeting tourists from abroad, instructed David to have his men properly uniformed and clearly identified with badges and credentials carrying their pictures. The President added that unless immediate improvement is brought about in the customs zone in this regard, he would assign either AFP personnel or ROTC cadets from different universities to meet and serve incoming passengers.

November 4.—FOR breakfast guest this morning, the President had Gerald Wilkinson, president of the Theo. Davis and Company, who recently returned to the Philippines from a two-month stay in Washington.

After breakfast, the President received callers at his study from 8:30 to 10:30 a.m., not forgetting to wire a birthday message to Vice-President Carlos P. Garcia, who was celebrating his birthday in Tagbilaran, Bohol.

The President this day ordered police protection for the offended woman in the rape case against Mayor Engracio Santos of San Juan, Rizal, who had been convicted by the court of first instance but later acquitted on a technicality by the Court of Appeals.

The President gave the order on the request of Policarpia Bansuelo 21, the aggrieved party, and her husband, Ching Ping Hui, 27. The couple called at Malacañang this morning to thank the President for heeding their appeal for justice and the interest he had shown in their case.

"Appeals for justice, especially when they come from helpless people, always interest me," the President said.

The offended woman tearfully informed the Chief Executive that since the incident, she and her husband, together with their star witness Cua Ching, had moved their sari-sari stores from San Juan to Paco in Manila owing allegedly to constant threats of bodily harm from San Juan thugs. She said that their witness had been stabbed to death in his sari-sari store in Paco allegedly by one of the San Juan thugs who continued to molest them as soon as the "tough guys" had located their new residence. The assailant is now out on bail, she added.

In ordering police protection for the couple, the President also ordered an investigation of the death of Cua Ching for the purpose of determining whether the killing of the star witness had any connection with the rape case. Yesterday, the Chief Executive ordered an administrative investigation of the San Juan mayor whose case had been dismissed by the Court of Appeals owing to failure of the offended party to sign the complaint for rape.

During a conference with Filemon Rodriguez, chairman of the National Economic Council, and Eduardo Taylor, manager of the Cebu Portland Cement Company, the President expressed concern over the increasing price of cement. He instructed the two officials to study ways and means of bringing down the cost of this essential building material for the benefit of consumers.

The President also instructed Rodriguez to look into the advisability of constructing two more cement plants with a capacity of at least 10,000 bags each a day in order to meet public demand and the building requirements of various economic and public works projects of the government.

The President this morning signed the appointment of Ambrosio Geraldez, deportation board secretary and assistant prosecutor, as traffic judge of Manila. Geraldez was immediately sworn in by Executive Secretary Fred Ruiz Castro in a ceremony held in Malacañang.

Upon the invitation of Rep. Vicente L. Peralta of Sorsogon, the President will visit Sorsogon sometime this month to lay the cornerstone of the ₱500,000 Cauayan River hydro-electric project. Rep. Peralta also sought the release of an additional ₱100,000 for another irrigation project in Castillo, Sorsogon.

Gov. Damaso Samonte of Ilocos Norte saw the President this morning and expressed himself in favor of an NP–DP fusion. If such fusion is not possible, Gov. Samonte said, the present relationship between the two parties should be maintained.

A delegation of officers of the Knights of Columbus from Bataan headed by former Gov. Emilio Naval, grand knight, presented the President with a ₱100-check as their organization's contribution to the Liberty Wells fund drive.

A large delegation from Morong, Tanay, Binañgonan, and Baras, all municipalities of Rizal, requested ₱62,000 for the construction of an irrigation project. The group was headed by Gov. Wenceslao Pascual.

Other delegations received by the President were those from the Philippine Association of University Women, the Women's Civic Group, the Women's Pharmaceutical Association, the Rural Improvement Council of Quezon City, and the National Rice Producers' Association.

Among the last callers were Sens. Fernando Lopez, Tomas Cabili, and Emmanuel Pelaez; Reps. Jose Corpuz of Nueva Ecija, Jose Aldeguer of Iloilo, Jose Puey of Negros Occidental, and Augusto S. Francisco of Manila; Mons. Rufino J. Santos, archbishop of Manila; Ambassador Raymund A. Spruance; and Lieut. Gen. Jesus Vargas.

After receiving visitors, the President motored to the Bureau of Public Highways yard at the North Harbor to fulfill a speaking engagement

In a short talk delivered before Central Luzon district engineers who were holding a two-and-a-half-week seminar on the use and care of equipment, the President said he was optimistic over the outcome of the government's roads and bridges program after he had seen the large graders, tractors, caterpillars, bulldozers, and other equipment housed in the shops and repairs yard of the Bureau of Public Highways at the North Harbor.

The Chief Executive told the public works officials he was willing to give ₱500,000 for the purchase of badly needed spare parts so that "you will always have something to work on and which in turn will keep you away from politics."

Telling the district engineers to implement what they had learned from the seminar, the President urged them to lavish care and attention on the tools and equipment of their trade.

Arriving at the yard at 10:40 a.m., the President proceeded to the building where the machines were located and talked to the mechanics and laborers. After delivering his short talk before the Central Luzon district engineers, the President inquired into the development of public works projects in their respective districts. The President said that if they wanted to have him sign papers concerning the release of funds, they could bring the papers to him personally. He said that he was willing to give them money for their projects as long as there was no pilferage or dishonesty.

The President told the district engineers to keep away from politics and devote more attention to the ambitious road-building program of the government.

The President was accompanied by Public Works Secretary Vicente Orosa and Undersecretary Juan G. Paraiso. Upon arrival, he was met by Central Luzon Division Engineer Rafael Contreras, who, together with Yard Superintendent Florentino Montemayor, showed the President around the spacious yard.

The Chief Executive stayed for about an hour with the district engineers and returned to Malacañang about noon.

The President this day signed Executive Order No. 79, creating a National Forestry Council to fill "an urgent need for the proper conservation and management of the forest resources of the country and for the reforestation of critical areas of barren watersheds." The chief function of the council is to advise the Department of Agriculture and Natural Resources in bringing about the orderly utilization and proper conservation of forest resources, including the reforestation of strategic barren areas.

Members of the council are the agriculture secretary, chairman; a civic leader to be appointed by the President, executive chairman; and the director of forestry, the chief of the Constabulary, the chief of the Philippine Air Force, the undersecretary of justice, the manager of the National Power Corporation, the director of soil conservation, the director of animal industry, a representative of the Philippine Lumber Producers' Association, and a representative of the Society of Filipino Foresters, members.

As chairman of the council, the agriculture secretary is authorized to organize a provincial forestry council in each province where it is needed. The members of this council shall be the district forester, the PC provincial commander, the provincial fiscal, the division superintendent of schools, a representative of a civic organization, a representative of the provincial governor, and a forestry licensee.

The President directed this day Defense Secretary Sotero Cabahug that in the integration of reserve officers into the regular force, more cognizance be given to those "who have passed the acid test of hazardous field duty, rather than to those who have only distinguished themselves in rear echelon assignments or headquarters duty."

The President sent a memorandum to the defense secretary stating his observations on the recommendations of the defense department for integretion of 50 reserve officers.

In a letter endorsing the recommendations, Secretary Cabahug said that the recommendees represented the final selections from candidates submitted by different unit commanders and passed through, and screened carefully by, the integration board.

The President observed that in the commissioning of regular officers the policy more often than not operated to favor reserve officers assigned to, or on duty with, a rear echelon assignment. He said that those who were not technically qualified but were also the more deserving by virtue of their having endured the hardships and rigors of field service against the enemy and who had won public recognition for the army were unjustly overlooked to the extent of making them feel that the government was callous to their field performance.

The President observed that a high proportion of candidates recommended for integration had been performing staff functions "which probably accounts for the recommendation made in their favor." He said, "It would appear that more weight attaches to staff duty, rather than to the field service of subordinate unit commanders."

The Chief Executive pointed out that this is not a fair appraisal of an officer's work insofar as integration is concerned. He stressed that the spirit of the Integration Act is to reward the more deserving officers, specifically those who have helped in the improvement of peace-and-order conditions and who have had, through their public relations, restored the people's confidence in the Government.

While the President is of the belief that such criteria for regular commission, like educational and military background, service seniority, and AGCT tests are necessary, yet he said these standards alone are not sufficient in considering the integration of reserve officers.

He said that these qualifications would not give justice to officers who for protracted periods "have endured jungle hardships while leading troops in mortal combat against the enemy."

The President returned the list of 50 officers recommended for integration requesting that the Army's criteria in recommending the officers "be re-examined and revised, if necessary, to give more cognizance to reserve officers who have passed the acid test of hazardous field duty, rather than to those who have only distinguished themselves in rear echelon assignments or headquarters duty."

The Chief Executive suggested the following points in considering the recommendation for integration:

(1) That the recommendation should include a detailed account of the specific achievements of the individual officers concerned, which according to the President, should be the principal criteria for determining his standing as regards integration; and,

(2) For each candidate there should be a concise report of the nature and extent of his participation in combat, and his other accomplishments in the field supported by documentary proof, such as citations, special mention in patrol, and other appropriate field reports.

In the evening, the President turned down the resignation of Sen. Lorenzo Sumulong as a member of the Bell Mission now in the United States.

"Considering that the mission needs your services badly," the President said in his cablegram to Sen. Sumulong, "I am making this appeal to you to reconsider your decision."

Sumulong, it was learned from a press dispatch, resigned from the Bell Mission in the United States, either as a result of political maneuvering in the Philippines to junk the NP–DP coalition or in view of the spreading criticisms in the country against congressional junketeers.

November 5.—SHOCKED by the sudden death of Reps. Gregorio Tan of Samar and Lorenzo Ziga of Albay in a motor accident, the President early this morning motored to the Motor Vehicles Office and ordered the tightening of traffic measures all over the country. (See page 5253 for the full text of the President's statement on the death of the two solons.)

Acting swiftly after learning of the solon's death, the President called up Brig. Gen. Florencio Selga; PC chief, and directed him to mobilize the PC to wage an all-out campaign against traffic violators. He named Col. Mariano Azurin as traffic general officer to coordinate traffic enforcement all over the country.

The President arrived at the MVO about 9:30 a.m. and talked to MVO Chief Ruben Villaluz and other officials. He asked them about existing traffic regulations and urged them to work for the prosecution of all traffic violators to the limit permitted by law. He said drivers of trucks and other vehicles without parking lights, rear lights, head lights, and stop lights should be arrested if found on the road at night.

When informed that the MVO was moving its offices to the Bonifacio Drive, the President called up Public Works Undersecretary Juan G. Paraiso and instructed him to look into the possibility of having the MVO at the homesite district in Quezon City.

The President returned to Malacañang about 10:00 a.m. and received few visitors. Among his callers were Sens. Tomas Cabili, Jose Zulueta, and Macario Peralta, Jr.; and Reps. Carmen Dinglasan Consing of Capiz and Vicente Peralta of Sorsogon.

About 11:30 a.m., the President left Malacañang again and motored northward, stopping at the government experimental nursery in barrio Tabang, Guiguinto, Bulacan, where he was shown around by Victor Aldaba, Bulacan provincial agriculturist.

The President was impressed by the rice plants of various varieties planted about 40 centimeters apart in accordance with the so-called Morgarte system. Agriculture Undersecretary Jaime Ferrer, who accompanied the President, explained that under this system, only one ganta of rice seedlings instead of one cavan is needed to plant one hectare. With the use of fertilizer, he said the same yield per hectare is realized by the farmer as in the ordinary system. The new system has been popularized by one Eugenio Morgarte from Zamboanga.

The President instructed the local agriculturists to indoctrinate the farmers in the area with the new system. He told Aldaba to invite farmers into the nursery and introduce to them this economical method of planting rice.

The President and his party ate lunch at the cottage of Brig. Gen. Manuel F. Cabal at Camp Olivas, Pampanga. After lunch, the President proceeded to the provincial hospital in San Fernando, Pampanga, and visited Rep. Pedro G. Trono of Iloilo, who was among the five persons injured in the car accident the previous night which resulted in the death of two solons. Confined with Rep. Trono at the provincial hospital were Dr. Manuel Arambulo, Central Luzon inspector of the Bureau of Hospitals, and Jaime Rodolfo, secretary of the House committee on health.

Then the President proceeded to Arayat some 20 kilometers away, passing at barrios Candating, Botasan, and Calatasan, former Huk strongholds.

In barrio Candating, near the foot of Mt. Arayat, the President ordered the construction of a seven-kilometer road for the benefit of three barrios to encourage the return of barrio inhabitants who had evacuated their homes at the height of Huk depredations years ago. The new road which will be started by army engineers of the 1st MA tomorrow, will also traverse the 1,000-hectare hacienda of the late President Manuel L. Quezon which had been purchased by the government during the Roxas administration for distribution to tenants.

This rich, fertile estate which had been abandoned for several years owing to dissident activities, will be turned into another EDCOR settlement project. The President said that some 200 families formerly living in that locality who had evacuated to Manila and squatted in various sections of the city, mostly in the North Harbor area, had already expressed their willingness to return to their barrios.

He said that the Army would extend all assistant to these poor families and resettle them in the area in connection with the "back-to-the-farm" campaign of the government. Maj. Pacifico Cabrera, 1st MA engineer, informed the President that the road would be completed in two months.

Returning to Camp Olivas about 3:30 p.m., the President also dropped in at the Pampanga provincial jail where he interviewed Huks detainees. He found that some of them who had been confined in the jail for as long as two years had been forced to go to the mountains by either the Huks or by abuses of constabularymen or civilian guards.

The President instructed the provincial fiscal and Brig. Gen. Cabal to reprocess carefully the cases of the detainees. He said he was particularly concerned over the cases of those who had families and children. He told the officials to find out whether those who had not committed any serious crimes could be released and allowed to join their starving families.

Shown around the jail by Jose L. Siopongco, provincial warden, the President noticed that most of the 150 prisoners confined for various crimes were going barefooted on their cold, cement cells. He ordered Capt. Pat Garcia, his military aide, to buy 150 wooden clogs to be given to the prisoners. The Chief Executive also instructed provincial authorities to increase their meal allowances of P.46 per person per day. He told Cabal to have an Army physician check upon the prisoners' health regularly.

The President returned to Malacañang in the evening.

The President this day suspended Mayor Engracio Santos of San Juan, Rizal, who had been accused of rape. He said that no public official denounced for such a "barbarous act" should remain in office until he had cleared himself. Mayor Santos had been accused of rape and was convicted by the Rizal Court of First Instance. His conviction was reversed by the Court of Appeals on a technicality and was acquitted.

The girl whom Mayor Santos was said to have raped called on the President the preceding day and complained that men of the mayor had been hounding her.

After talking to the aggrieved woman, 21-year old Policarpia Bansuelo, the President ordered an administrative investigation of Mayor Santos whose case had been dismissed by the Court of Appeals owing to the failure of the offended party to sign the complaint for rape. He likewise ordered police protection for her because of constant threats of bodily harm by San Juan thugs.

November 6.—PRESIDENT MAGSAYSAY was undoubtedly the proudest son of an equally proud parents when he attended the golden anniversary of his parents, Mr. and Mrs. Exequiel Magsaysay, at the Pro-Cathedral in San Miguel. The proud son was accompanied by the First Lady and their three children.

Also present were the President's brothers and sisters; namely, Jesus, Jose, Genaro, Mercedes, Mrs. Soledad Magsaysay Cabrera, and Mrs. Luisa Magsaysay Corpus.

The ceremony was officiated by Mons. Rufino J. Santos, archbishop of Manila. The apostolic benediction was given by Mons. Egidio Vagnozzi, papal nuncio.

Among the ranking government officials present were Chief Justice Ricardo Parás and other justices of the Supreme Court, senators headed by Senate President Eulogio Rodriguez, Sr., Cabinet members, and representatives and their ladies.

From the church, the President and the First Lady motored to the Manila Hotel, where the celebrants received their guests at breakfast. They returned to Malacañang after dropping in at the Funeraria Nacional, where they personally conveyed their condolences to the bereaved families of two deceased solons.

The President offered a government plane and railroad coach to take the bodies of Reps. Lorenzo P. Ziga of Albay and Gregorio Tan of Samar to their respective hometowns.

The President made the offer to the relatives of the deceased solons when he and Mrs. Magsaysay visited the remains at the Funeraria Nacional this morning. He also ordered the Army to mount honor guards over the remains of the solons who had been killed in a car accident at a Pampanga highway the other day.

The President did not receive any caller this morning. He closeted himself in his private study and worked on a pile of pending state papers. Only conference he had was with Brig. Gen. Alfonso Arellano, commanding general of the PA Training Command, who reported on the progress of the training program of the government. Arellano said that 3,200 20-year old trainees had just graduated and that the AFP's training in Fort Wm. McKinley was ready to receive another batch of trainees.

Upon hearing of the success of the Philippine basketball team in Brazil, the President dispatched the following telegram to the Philippine team, care of Solicitor General Ambrosio Padilla, delegation chairman:

"Congratulations for magnificent performance winning third place world basketball championship. I share country's pride not only in your victories but in clean sportsmanlike manner they were won. You have brought new glory and luster to the name Filipinos."

In the evening, the President commended the Philippine delegation that attended the recent Colombo Plan conference at Ottawa, Canada, and obtained approval of a Philippine application for membership in the plan.

The President expressed the commedation when he received Rep. Ramon Durano of Cebu, one of the three congressmen who had represented the Philippines at the conferences, who came to Malacañang to report on the mission. The two other solons were Reps. Augusto Francisco of Manila and Ferdinand Marcos of Ilocos Norte.

Durano reported that the Philippine action was hailed and warmly received by both Asian and Western powers, especially by some of the former which had nursed some resentment of what they called "indifference" of the Philippines to its neighbors. The Philippine participation in the Plan has offset this impression, he added.

Durano belied some reports that the Philippine action would require huge outlays from the government. He said this was not so and that the country could look forward to many benefits from participation in the Plan. He said what the Philippine spokesman at the conference, Rep. Marcos, offered member countries was cooperation in students and technicians exchange programs. Especially, Marcos offered the facilities of the country's educational institution in accepting students from member nations in such fields as public health and agriculture. Durano said the Philippine group made this offer because it did not wish to appear interested only in reaping benefits out of the Plan without contributing anything in return.

Durano also said the Colombo powers were so elated over Philippine participation in the Plan that the formal rites of acceptance were held five minutes after the Philippine application was approved. These rites consisted of hoisting the Philippine flag outside the conference building to fly side by side with the colors of the other member nations.

November 7.— AFTER BREAKFAST, the President conferred with Lieut. Gen. Jesus Vargas and Brig. Gen. Eulogio Balao, who reported on the failure of the surrender negotiations with the wily Moro bandit chief, Kamlon. The President also conferred with Col. Antonio V. Sayson, who reported on the progress of the investigation of the so-called Nueva Ecija murder syndicate.

The President told Gen. Vargas to launch a full-scale military campaign to get Kamlon, depite overtures by Moslem solons to negotiate for his unconditional surrender during the conference with the top Army brass. He reiterated the Government's policy of entertaining only "unconditional surrender."

Later, the President conferred with Justice Secretary Pedro Tuason on pending appointments. Secretary Tuason reported that he had been besieged by politicians about the appointments of their protegees.

The President also took up with his justice secretary the administrative charges filed against San Juan Mayor Engracio Santos. The Chief Executive expressed his desire to expedite the investigation of the administrative charges against the suspended mayor. He also inquired from Tuason about the status of several cases of graft and corruption investigated so far. He instructed Tuason to take the cases to court.

In the evening, the President received four-star General J. Lawton Collins, former U.S. chief of staff, who came to pay a courtesy call. Collins was on his way to Vietnam to carry out a presidential mission for President Eisenhower. He was accompanied to Malacañang by Ambassador Raymond A. Spruance.

The President remarked that Gen. Collins had not grown old in spite of his heavy duties. Collins in turn remarked that President Magsaysay had not shown sign of aging in spite of his greater duties as Philippine

Chief Executive. The President had known Collins when the latter was still U. S. Army chief of staff.

During the 20-minute call on the President, Gen. Collins recalled his experiences as lieutenant colonel in the U. S. Army, from 1936 to 1939 when he was stationed in Fort Wm. McKinley. He said he had been sent to Bataan to supervise the construction of tunnels in the province.

November 8.—THE PRESIDENT this morning alerted all the social welfare agencies of the government, including the medical and egnineer corps of the Armed Forces, to proceed to the Bicol region as soon as possible to help victims of typhoon *Ruby*. The President issued the alert after reading reports that the typhoon had hit some parts of the Bicol region with its full force. The reports also stated that hundreds of victims had been rendered homeless and that a number of persons had been killed.

Among the government agencies alerted by the President were the Department of Public Works and Communications, the Department of Health, the Social Welfare Administration, the Philippine National Red Cross, and the Manila Railroad Company.

The President this day issued Administrative Order No. 72, creating a committee to study the shipping industry. The new committee is composed of Commodore Jose M. Francisco, chairman; Judge Roman Cruz and former Customs Commissioner Alfredo de Leon, members.

Under the administrative order, the committee is vested with all the powers of investigation, including the power to summon witnesses and administer oaths, and take testimony or evidence relevant to the investigation. It is also authorized to call upon any government office for such assistance and information as it may require in the performance of its functions and is given access to any books, documents, papers, or records of such government offices.

The President this morning received callers at his executive office until 10:30 a.m. Then he closeted himself in his private study and worked on a pile of pending state papers.

Mayor Justiniano Borja of Cagayan de Oro City presented the President with a check for ₱3,150.70 representing voluntary contributions of civic-spirited citizens of Cagayan de Oro for the Peace and Amelioration Fund campaign.

Eugenio Trinidad, president of the Victory Liner, Inc. (bus operators), also presented a ₱300-check for the Liberty Wells fund drive.

The President directed the Civil Aeronautics Administration to look for a suitable place for the construction of an airfield in Marinduque. The Chief Executive said that some money was ready for the construction. He issued the directive after taking to Rep. Panfilo Manguera, who headed a delegation of municipal officials from Marinduque.

Another directive was issued to Public Works Secretary Vicente Orosa ordering him to start releasing ₱185,000 for waterworks in Padre Burgos, Quezon. The money was requested by Mayor Bienvenido Marquez of Padre Burgos who saw the Chief Executive with Mayor Marcial Punzalan of Tiaong, Quezon. Mayors Marquez and Punzalan are the president and vice-president, respectively, of the Quezon mayors league.

The first callers of the President were American officials of the CALTFX who were accompanied to Malacañang by J. P. Roxas of the local CALTEX. The officials, C. Rolsholm, president, and Ray Hugos and B. S. Hollimon, who are leaving the United States, were thanked by the President for the big CALTEX refinery in Batangas which has provided employment to hundreds.

An American teacher, Miss Blanche Wenner, paid a courtesy call on the President and said that her students in America admired what was being accomplished by the Philippine Government under President Magsaysay. She also informed the President that she had had quite a number of Filipino students in Seattle, Washington, where she had taught for a long time.

Robert Blum, president of the Asia Foundation of Chicago, called to pay his respects following his recent arrival in Manila in the course of a tour of Southeast Asian countries to find out how his organization could assist democratic nations in this part of the world. He was accompanied to Malacañang by William T. Fleming, manager of the foundation's branch in Manila.

Among the last callers were Sen. Tomas Cabili, who accompanied a group of potato growers from Cotabato, Rep. Cornelio Villareal and Gov. Eduardo Abalo of Capiz, Fernando Baiboa, and Louise Orendain.

The President authorized today the release of a special budget for the Bureau of Forestry in the sum of ₱600,000 for the protection of forest areas all over the Philippines.

In a memorandum to the President endorsed by Agriculture Secretary Salvador Araneta, Forestry Director Felipe R. Amos said that the sum of ₱600,000 would be spent in protecting specific forest areas, including watersheds and cut-over areas, from destruction by *kaingeros* and squatters all over the Philippines, "so that the reforestation of such areas can be attained through natural regeneration."

Out of the appropriation of ₱600,000, the sum of ₱552,720 would be spent for the employment of 540 temporary and emergency laborers at ₱4 each daily, who will be designated as deputy forest guards. Their employment will be from November 1, 1954, to June 30, 1955. These deputy forest guards will each be assigned to protect a definite forest sector of about 2,000 hectares.

The sum of ₱43,200 will be spent for the hire of horses to be used by the forest guards in their travels. The balance of ₱34,080 will cover miscellaneous expenses such as medical treatment, hospitalization, and travel expenses of persons (not government employees) who may be called as witnesses in court in *kaingin* cases.

The deputy forest guards will be employed to protect the forest in the headwaters of rivers which cause destructive floods, and in watersheds of rivers used as sources of water-power, irrigation systems, and waterworks. According to Director Amos, in some places there are irrigation dams, like the Vintar Dam, which are often destroyed by floods. He said that unless the Government could protect and maintain a good forest cover above these dams, the dams would always be susceptible to damage through floods.

The employment of these deputy forest guards was recommended during the first Philippine forest conservation and reforestation conference held from September 30 to October 1, 1954, pursuant to President Magsaysay's Administrative Order No. 57.

In connection with the Government's efforts to conserve Philippine forests, the President last week signed Executive Order No. 79, creating a national forestry council as there was "an urgent need for the proper conservation and management of the forest resources of the country and for the reforestation of critical areas of barren watershed."

Noevmber 9.— AFTER BREAKFAST with Defense Secretary Sotero Cabahug, the President received Lieut. Gen. Jesus Vargas, AFP chief of staff. Later, the President received Sens. Justiniano S. Montano and Manuel C. Briones. Gov. Juan Triviño of Camarines Sur was among the President's early callers.

Then, accompanied by Gen. Vargas, the President made a surprise visit to the Central Bank. Arriving about 9 a.m., the President proceeded directly to the office of Acting CB Deputy Governor Andres Castillo.

The President inquired into the processing of dollar allocation at the Central Bank from Acting Governor Castillo after receiving complaints that new industries were receiving "turtle-like" treatment in their applications for dollar allocations. Castillo informed the President that the CB was going over the dollar allocation applications "thoroughly" because dollars were limited and the CB was seeing to it that they "are well distributed and utilized".

Upon being told by the President that they should facilitate the processing of dollar allocations, Castillo said that the import-export department, which takes care of dollar allocations, would install one section each for the processing of dollar allocations for machinery and raw materials for preferential treatment. Castillo said the machinery and raw materials sections would process only the dollar allocations of new industries engaged in machinery and raw materials.

The President told Castillo that many businessmen had seen him and expressed their desire to establish new industries in the country. He said that their only complaint was the slow processing of dollar allocations.

The President directed this day Justice Secretary Pedro Tuason to send a special prosecutor to Ormoc, Leyte, to help the provincial fiscal in the prosecution of murder cases committed in the last elections. He also ordered the Philippine Constabulary and the National Bureau of Investigation to send a team of investigators to Ormoc to look into the pending cases of murder and frustrated murder.

The President issued the directives on request of the WMPM of Ormoc conveyed to him by Rep. Domingo Veloso. According to Rep. Veloso, the WMPM was not satisfied with the "slow pace" of the prosecution of electoral violence cases in Ormoc.

Rep. Veloso, who saw the President with Sens. Fernando Lopez and Ruperto Kangleon and Rep. Conrado Morente of Mindoro Oriental, told the President that a murder case against some policemen in Ormoc who allegedly shot to death a Democratic Party leader in the last elections was still undecided.

The President also issued a directive to Agriculture Secretary Salvador Araneta to release 400 hectares of government land in barrio Kapatalan in Siniloan, Laguna, for settlers who had been clearing and planting the land. He directed the secretary of agriculture to subdivide the land at five hectares for each family. According to the leader of the settlers, Demetrio Perez, there were about 300 settlers in the barrio. The President promised the settlers, who were accompanied by Laguna Rep. Wenceslao Lagumbay, that he would visit their barrio as soon as the land was formally given them by the Bureau of Lands.

The President received this morning a total of more than 500 persons composed mostly of farmers from nearby provinces who requested financial assistance for barrio roads, school-buildings, health centers, and irrigation projects for their respective localities. He also received a large group of Nacionalista congressmen, provincial governors, and municipal mayors who presented him with resolutions reiterating their pledges to support his administration and expressing their preference for an NP–DP fusion.

Nine out of ten mayors of Nueva Vizcaya headed by Mayor Guillermo Aban of Bagabag, president of the province's mayors' league, submitted council resolutions seeking aid for their typhoon-stricken towns. Accompanied by Rep. Leonardo Perez, the delegation informed the President that they would abide by whatever decision the Chief Executive would make on the question of NP–DP coalition.

Asked to elaborate on their stand on the NP–DP coalition, the provincial officials told newsmen after coming out of the President's office: "We are leaving it all to the President. As titular head, he knows best what is good for the party."

Rep. Celestino Juan of Nueva Ecija accompanied a big group of farmers from Laur who sought the conversion of a 500-hectare forestry reservation into an agricultural land and its subdivision among some 150 farmers who had been cultivating this piece of public land for many years. The farmers also requested the President that they be included in the government's "Operations Dispersal" launched recently to start poor tenants in cattle breeding. The Chief Executive assured them that their request would be granted as soon as the hundreds of breeding cattle imported by the government arrived from abroad.

Gov. Dominador Chipeco of Laguna accompanied delegations of municipal officials and civic leaders from San Pablo City, Los Baños, Calamba,

Cabuyao, and Siniloan. Requests from the delegations included aid for waterworks and puericulture centers, and the condonation of loans incurred by the municipalities with the RFC before the war to enable these municipalities to obtain another loan to finance urgent projects in these localities. The delegations also requested Army engineers to help them in the construction of barrio roads.

The President received callers at his executive office until 12 noon. Among the last visitors were delegations brought in by Reps. Numeriano Babao and Apolinario Apacible of Batangas, Serafin Salvador of Rizal, Jose Corpuz of Nueva Ecija, Floro Crisologo of Ilocos Sur, Manuel T. Cases of La Union; Govs. Manuel L. Solidum of Romblon, Felix Fidel Paz of Marinduque, Juan G. Carbonell of La Union, and Juan F. Triviño of Camarines Sur, who submitted a preliminary report on his recent trip abroad.

Wanting to see for himself the extent of the destruction of the typhoon, the President in the afternoon motored to Bulacan, reaching beyond the outskirts of Meycauayan. Although Bulacan was not intensely hit by the typhoon, the President noted that some of the maturing rice crops on the farms along the sides of the national highway had been destroyed. He noticed also that in some parts, the water had overflowed the rice paddies and spilled into the small roads traversing the main highway.

The President returned to Malacañang at about 4 p.m. He was accompanied in his trip by his senior aide, Maj. Emilio Borromeo, and an assistant.

On his way back to Malacañang, he stopped at barrio Bangkal, Meycauayan, where he saw a group of people catching fish that had spilled from neighboring rice paddies into the rushing water. The men strung a net at the foot of the bridge to catch the fish. The Chief Executive talked to a small boy named Leopoldo Roviro, who showed him a basket of *bañgus* and mudfish.

The President directed this afternoon Agriculture Secretary Salvador Araneta to up-date estimates of the rice harvest this year in view of the destruction wrought by typhoon *Ruby* on the standing rice crops.

At the same time, the President in the evening re-alerted the Department of Health, the Social Welfare Administration, the Philippine National Red Cross, and the medical corps of the Armed Forces to be on the job of preventing the spread of disease and giving succor to the typhoon-stricken victims. He also instructed the Department of Public Works and Communications and the AFP corps of engineers to help in the reconstruction work.

The President gave these directives upon receiving early reports from Camarines Sur, Bulacan, Quezon, and Nueva Ecija that the typhoon had damaged agricultural crops, roads, and houses. Although reports from all the provinces lashed by the typhoon have not been received by Malacañang, the President expressed fear that the typhoon might have affected the standing crops which would diminish the anticipated harvest for this year.

November 10.— AFTER BREAKFAST with Vice-President Carlos P. Garcia, the President received Mr. and Mrs. Donald Ballantine, who were accompanied by Manuel Marquez, president of the Commercial Bank and Trust Co. Ballantine is the vice-president of the Chase National Bank of New York.

Another courtesy caller of the President was K. B. Datta, secretary-general of the Foreign Relations Society of India. The Chief Executive received callers until 10 a.m., when he presided over the regular meeting of the Cabinet.

The President conferred this day with a group of Manila Jaycees on suggested measures to minimize traffic accidents. Among the measures submitted by the Jaycees and approved in principle by the President were:

(1) The installation of speed governors on all transportation buses so that the drivers could not drive over 60 m.p.h.;

(2) The fixing of bus stops in Manila;

(3) Thorough inspection of tires and brakes by the Motor Vehicles Office; and

(4) Bonding of all professional drivers in accordance with the new law. (In case of jeepney and transportation bus drivers, the owners are required to provide the bonds for their drivers.)

The President directed the Motor Vehicles Office, the Public Service Commission, and the Manila Police Department, through Executive Secretary Fred Ruiz Castro, to study the implementation of these measures.

The Manila Jaycees were headed by their president, Luis Araneta, and included Francisco Trinidad, Vicente Faustino, Ramon Osmeña, Philip Monserrat, Baldwin Young, Leonardo Siguion-Reyna, and Dr. J. Santos.

The Chief Executive also issued a directive to Philippine Constabulary Chief Florencio Selga to confine drivers found guilty of violating traffic rules. A new law provides that erring drivers may be confined for a maximum period of 12 hours.

After conferring with the Jaycees, the President went to the Malacañang front yard and inspected a new fire truck of the Quezon City Fire Department. The fire truck was built locally with imported spare parts. The chasis is an International motor truck produced by International Harvester Company of the Philippines.

The President congratulated Paul Wood, president of the International Harvester, and Ramon Estanislao, owner of the Center Supply Co. which built the fire truck. Impressed by the build of the truck, the Chief Executive said more trucks of the kind should be made locally.

The Cabinet, with President Magsaysay presiding, approved in principle today a plan to permit the entry of Filipino and American citizens into each other's country as "international traders" on a basis of reciprocity. The proposed plan will be implemented by executive agreement between the Presidents of the Philippines and the United States sanctioned in either case by their respective Congress. The Cabinet instructed Vice-President and concurrently Foreign Affairs Secretary Carlos P. Garcia to prepare legislation for submission to the next session of Congress authorizing the President to enter into such an executive agreement.

The plan hopes to meet a situation created by the absence of a treaty of commerce and navigation between the two countries. Under the immigration laws of both the Philippines and the United States, entry of traders into each other's country is permitted only in cases of nationals whose countries have a treaty of commerce and navigation with it. No such treaty exists between these two countries.

In the absence of such a treaty, the entry of American nationals into the Philippines has been governed by the executive agreement on trade and other matters. The agreement provides for the entry of 1,200 American nationals yearly during the period 1946–56, with such nationals being entitled to five years' stay. Under this provision, the rights of American traders to remain in the Philippines will expire in 1956.

To answer the deficiency created by the forthcoming expiration of this period and by the absence of a treaty of commerce and navigation between the two countries, there has been filed in the U. S. Congress a bill sanctioning an executive agreement with the Philippines under which Filipino traders will be admitted into the United States as non-immigrants on a basis of reciprocity with the Philippine Government. The Cabinet has agreed to reciprocate this American move.

The President at the Cabinet meeting today released ₱100,000 to the Social Welfare Administration to finance further relief work for victims of typhoon *Ruby*, promising to make additional sums available as the need for them arises. The funds will be drawn from the President's ₱10 million contingent fund which was appropriated for, among other specific purposes, disaster relief.

The Cabinet meeting was advised by Social Welfare Administrator Pacita Madrigal-Warns that her office had already extended relief assistance to more than 15,000 families, or to a total of about 80,000 persons. Noting some observations made in the press to the effect that disaster relief aid was spread "too far and too thin," Commissioner Warns explained this was due to budgetary limitations. She pointed out that only ₱1.5 million

was appropriated annually for relief operations, of which amount 10 per cent was set aside for salaries, wages, and other operational expenses.

Marshalling the government's forces towards extending aid and relief to the destructive typhoon's victims, the President also:

1. Told Defense Undersecretary Jose M. Crisol, who attended the Cabinet meeting in place of Secretary Sotero Cabahug, to assign Army engineers to help those who were rendered homeless in the repair or restoration of their homes;

2. Ordered the Armed Forces medical corps to coordinate with Department of Health personnel in treating the injured and preventing the outbreak of epidemics;

3. Instructed that all trucks of the AFP be alerted for use in the relief operations; and

4. Directed Agriculture Secretary Salvador Araneta to canvass provincial governors of the stricken provinces on their immediate needs for emergency rice.

Also at the Cabinet meeting, the President directed the assignment of AFP personnel to help check the quality of newly imported Pakistan rice which previously had been reported as completely spoiled and inedible.

Complying with the President's orders, Undersecretary Crisol immediately made available 150 officers and men from the quartermaster-general's office at Fort William McKinley to help in the checking operations. The men will be under the command of Col. Antonio de Veyra. They will assist NARIC personnel in closely examining and determining the quality of the imported rice stocks

Economic Coordination Administrator Alfredo Montelibano told the Cabinet that, contrary to earlier reports, a check of the rice importation up to the present revealed that the large bulk of the shipment was in good condition. Spoilage amounted to only five per cent of the stocks checked thus far, he said, and the spoiled rice was being condemned. The Pakistani rice shipment which has reached Manila totalled 10,000 tons, representing one-fifth of the total importation contracted from Pakistan by private firms with NARIC assistance.

Montelibano told the Cabinet that Chioco, while in Pakistan during a recent trip to rice-exporting countries in Asia, had warned against the spoilage of some of the stocks being readied for shipment to Manila. The Cabinet felt that since this warning was properly served, the NARIC could impose full responsibility on the importer for spoiled stocks, including any contract violations and penalties that these may entail.

The President directed that the Cabinet be given a complete report on the Pakistani rice importation after quality check-up has been completed.

The President also instructed Finance Secretary Jaime Hernandez to assign responsible personnel to the airport and piers to serve as "reception officers" to check on the kind of treatment accorded by regular customs and immigration personnel to tourists and arrivals. The "reception officers" will see to it that tourists and arrivals are treated courteously and will hear complaints against erring personnel for disciplinary action. The President directed the finance head to transmit to the Rehabilitation Finance Corporation board of governors his instructions that this organization implement an approved plan to extend credit assistance to fishpond owners. The President's directive was inspired by complaints that the RFC was not implementing this plan.

In the afternoon, the President received a joint report by the PCAC, the JAGO, and the Court of Industrial Relations that the long-standing controversy between the tenants and the landlord of the Gabaldon estate in Guimba, Nueva Ecija, had been finally solved.

The President congratulated these three government agencies for their untiring efforts in working for the happy solution of this ticklish tenancy problem. He also praised the tenants and the landlord for their mutual cooperation in solving the problem.

The President said that he was very much satisfied with the resolution of this problem, as this showed that similar tenancy problems in other

parts of the Philippines could likewise be really settled with more understanding and cooperation between both parties.

The tenancy problem just resolved was between the estate of Bernarda Tinio Vda. de Gabaldon, represented by her son, Senen Gabaldon and their attorney, Artemio Valenton, on the one hand, and some 43 tenant families comprising some 300 family members, led by Priscillano Cabatbat, with their attorney, Teodulo Cruz. The conflict between the landlord and the tenants had been temporarily settled extra-judicially sometime last July with Judge Arsenio Roldan acting as conciliator and with the help of the PCAC headed by Chairman Manuel P. Manahan and Atty. Antonio Villegas, and a JAGO group headed by Lt. Col. Guillermo Santos and Capt. Cristino S. Carreon.

In the extra-judicial agreement, both parties had agreed to partition the harvest on a 55-45 ratio in favor of the tenants. It was also agreed that irrigation expenses for each hectare of land should be ₱12 with both parties sharing the cost of irrigation in the same ratio.

In spite of this amicable decision, it was reported that both parties had not complied with the agreement. It was further reported that the tenants later on harvested the crops without the knowledge of the landlord. In view of the trouble that followed, PCAC, JAGO, and CIR officials again interceded in an effort to settle the problem once and for all.

In the evening, the President said that religion and the strong family life of the Filipino people are the Philippines' greatest weapons in its successful fight against Communism. The President made this remark before more than 120 delegates representing 12 countries to the East Asia Christian Family Life seminar-conference who called on the Chief Executive to pay their respects.

In his extemporaneous remarks, the President welcomed the delegates who had come from Japan, Korea, Okinawa, Guam, Formosa, Hongkong, Indo China, Thailand, Burma, Malaya, and Indonesia to the Philippines. He said he was glad they had discussed in their conference the strengthening of the family life as a weapon in fighting Communism, adding that the first line of attack of the Communists is the family.

The President revealed that in his fight against Communism, he had advocated strengthening of the family life as a buffer against the onslaught of Communism. He remarked that the Philippines is ready to fight Communism because the country is spiritually prepared for it. He attributed this spiritual preparedness to its religion.

The delegates were headed by Dr. Gumersindo Garcia, president of the Philippine Federation of Christian Churches; Dr. Rajah B. Manikam, East Asia secretary of the International Missionary Council and the World Council of Churches; Dr. Ruby Manikam, Dr. and Mrs. Sylvanus Milne Duvall, authors and lecturers; Dr. David R. Mace, chairman of the International Commission on Marriage Guidance; Rev. Jose A. Yap, executive secretary of the Philippine Federation of Christian Churches; Dr. Ortha M. Lane, Dr. Irma Highbaugh, Rev. and Mrs. Samuel G. Catli, co-deans of the East Asia Christian Family Life seminar-conference; Rev. Jacob Quiambao; and Mrs. Ermelinda Quiambao.

Dr. Garcia, who presented the delegates to the President, in his brief remarks said that the delegates who had met in Manila in the past week had studied the problems of family life and how to strengthen family ties as a means to fight off Communism.

Dr. Manikam, speaking for the delegates, thanked the President for the hospitality that the delegates have received from the Filipino people during their stay here. He said that although the delegates spoke diverse languages, it was a common faith in Christ which had united them in purpose. He paid high tribute to the Philippines as the most Christian country in Asia, which he added inspired the decision to hold their East Asia seminar-conference in Manila. He also lauded the Chief Executive, who, as head of a Christian country, is also the head of a Christian family.

The Presdent received the delegates at the Malacañang ceremonial hall at 4:15 p.m. He shook hands with each individual members as they were

presented by Dr. Garcia. He posed for souvenir pictures with each delegation and signed autographs for some of the delegates.

The President was informed today by JUSMAG Chief Maj. Gen. Robert M. Cannon that the first shipment of MDAP (Mutual Defense Assistance Pact) equipment since the meeting of the Philippine-U. S. Defense Council last September will soon arrive here. The value of this equipment, Cannon said, is P17 million. He said the shipment has been approved in Washington.

The bulk of the equipment, the JUSMAG chief said, will be of the type which will greatly increase the combat and construction capacity of the engineer corps of the AFP. Gen. Cannon stated that the pending shipment includes such major items as bulldozers, dump trucks, power shovels, and floating bridges. The arrival of the shipment will permit the formation of engineer units planned for the expansion of the Philippine Army. This will not only increase the combat effectiveness of the Army but will, in addition, provide the type units which can materially aid President Magsaysay's program of rural development.

The Philippine Government, at the present time, is utilizing some of the AFP engineer battalions, on a training basis, in the construction of roads and bridges which have military value, while at the same time substantially increasing the lines of communications in the rural areas. Other engineer units have been aiding the Administration in the opening of new lands, timber from which has been used by the Armed Forces for its own construction.

President Magsaysay expressed appreciation for the forthcoming shipment and said this is another eloquent evidence of America's determination to fully comply with her commitments to the Philippines.

November 11.—PRESIDENT MAGSAYSAY was informed this morning by Lieut. Gen. Jesus Vargas, AFP chief of staff, that the Sulu campaign was going on as expected. He denied the veracity of reports in some newspapers that there would be a reshuffle in the 4th MA and JOLTAF commands, allegedly because of strained relations among the officers. Vargas told the President that in his recent visit to Sulu he did not notice anything wrong among the ranking officers in the commands. He added the stories in the newspapers about the pending reshuffles did not come from the Department of National Defense but were merely speculations by some people who had come from Sulu.

At the request of Gen. Vargas, the President approved the release of P100,000 for the construction of roads in Sulu. The President said he would soon release some money for waterworks for the province. He observed that unemployment was one of the causes of discontent among the Moros.

Before conferring with Gen. Vargas for 20 minutes, the President received Dr. Petronio Alava, who is practising in the United States.

Some members of the National Rifle and Pistol Association also called and presented the President with a 30-caliber rifle. The NRPA delegation was headed by Dr. Felix Cortes, association president.

Prof. Tage U. Ellinger also presented the Chief Execuitve with a copy of his new book, *Friend of the Brave*. The new book is about the professor's trip among some tribes in the Philippines.

Gov. Francisco Infantado of Mindoro Oriental accompanied Dr. A. J. Broomhall, who is a missionary among the Mangyans in his province. Dr. Broomhall, a physician, was thanked by the President for extending medical assistance to the natives.

Other callers of the President included Sen. Macario Peralta, Jr.; Reps. Augusto Francisco of Manila, Domocao Alonto of Lanao, and Fernando Fajarillo of Camarines Norte; Gov. Felix Caro of Isabela; and NARIC General Manager Juan O. Chioco.

In the afternoon, the President awarded the Philippine Legion of Honor (legionnaire) medal to six farmers of Lal-lo, Cagayan, for meritorious achievement in connection with the peace-and-order campaign of the government.

In simple ceremonies held at the Malacañang reception hall in the presence of Defense Secretary Sotero Cabahug, Lieut. Gen. Jesus Vargas, and other Army brass, the Chief Executive pinned the medals on Ciriaco Hilario, Policarpio Arellano, Narciso Rigon, Alfredo Coloma, Cesario Garcia, and Luis Reyes. The six farmers were decorated by the President for their courage in killing three Huks and wounding of another who was later killed by government patrol. The President congratulated the awardees and praised them for their courage, setting an example for others to follow in connection with the peace-and-order campaign of the government, especially in its drive against the Huks.

Then the President met with officials and members of the board of directors of the PHHC at his study. He instructed the PHHC officials to seek means of reducing the rentals in the government's low-cost housing projejcts to enable more of the low-income class to rent these government houses. He told Acting General Manager Vicente Orosa to explore means of extending the instalment period for low-cost government houses to 20 years.

The President also told Secretary Orosa to hurry up the construction of a low-cost housing project in Tondo. He said that he wanted this project finished soon to enable the government partly to clear the slums and provide decent living places for poor people.

Those present at the conference were Acting General Manager Vicente Orosa; Board Chairman Agapito Braganza; Board Members Sergio Ortiz, Dr. Salud Pareno, Bienvenido Olarte, Isidro L. Retizos, Jack Arroyo, and Angel Nakpil and Board Secretary Ben Gray.

The President also received Sens. Cipriano Primicias and Edmundo B. Cea and Rep. Ricardo Y. Ladrido of Iloilo, who took up with the Chief Executive various matters.

The following statement was released this day by Malacañang:

"Sen. Laurel conferred with Japanese Premier Yoshida on the Japanese reparations question in New York last week on instructions of President Magsaysay.

"Sen. Laurel will meet again with the Japanese premier in Washington sometime next week.

"The President gave his sanction to Sen. Laurel's meeting with Yoshida out of his desire not to leave unexplored any avenue of approach that could lead to early and satisfactory settlement of the reparations question.

"President Magsaysay is in touch with developments regarding the Laurel-Yoshida meeting, and Ambassador Felino Neri is likewise posted on such developments."

November 12.— AT A BREAKFAST conference with Rep. Ismael Veloso and Gov. Alejandro Almendras of Davao, the President issued several directives designed to benefit the people of Davao. The President:

1. Ordered Public Works Secretary Vicente Orosa to release ₱10,000 for the irrigation system of Matti Bulatakay, Davao, which would irrigate some 5,000 hectares of rice land;

2. Directed Agriculture Secretary Salvador Araneta to have 10,000 hectares of land originally reserved for reforestation in Mt. Apo made available for settlement among the families already settled there; and

3. Ordered Col. Antonio P. Chanco, chief of the AFP corps of engineers, to give one pre-fabricated schoolhouse to Digos, Davao.

The President told the Davao officials who came for the release of money and lands for their province that settlers in government lands in the provinces would no longer be called "squatters" but "pioneers".

After the breakfast conference with the Davao officials, the President inducted into office Procolo Fuentes as councilor of Davao City.

The President then proceeded to his study room, where he received a delegation of Ateneo alumni who presented him with a formal invitation to the Ateneo alumni homecoming on December 5. The President accepted the invitation. President Magsaysay is the only honorary Ateneo alumnus.

The Ateneo alumni delegation was composed of Claudio Teehankee, president of the Ateneo alumni association; Ernesto Rodriguez, Jr., chairman of the homecoming committee; Teddy Lim, Godofredo Zandueta, Fernando Zabarte, Francisco Catala, Justo de Dios, Pedro Limson, and Ruben Gonzales.

Reps. Lorenzo Teves and Lamberto Macias of Negros Oriental, Jose Aldeguer of Iloilo, and Francisco Perfecto of Catanduanes also called to discuss with the President waterworks and irrigation projects in their respective provinces.

Among the other callers of the President were Sen. Tomas Cabili; Reps. Vicente Peralta of Sorsogon, Erasmo Cruz of Bulacan, Angel Castaño of Manila, Emilio Cortez of Pampanga, and Bartolome Cabangbang of Bohol; and Mayor Arsenio H. Lacson of Manila.

Filemon C. Rodriguez, National Power Corporation general manager and chairman of the National Economic Council and the PHILCUSA, paid a courtesy call on the Chief Executive. Rodriguez is leaving on November 14 for Johns Hopkins Hospital in Baltimore for a medical check-up.

The President this day ordered the dismissal of Assistant City Fiscal Primitivo P. Cammayo of Manila owing to "moral unfitness for public service."

The presidential order of dismissal came following administrative investigation of Assistant City Fiscal Cammayo for alleged dishonest conduct prejudicial to the interest of the service. It was charged that Cammayo had asked and received from Domingo Bebania, an insular prisoner, the amount of ₱200 and attempted to get from the prisoner a "Texas" fighting cock for assuring the prisoner that he would soon be released from confinement. The release, incidentally, never materialized.

In his administrative order removing from the service the assistant city fiscal, the President declared that "observance of the highest standards of personal integrity and decorum is required of all public officials if the government is to deserve the trust and confidence of the people."

Findings at the investigation showed that after the denial by former President Quirino of his petition for conditional pardon, Prisoner Bebania had requested in writing Fiscal Cammayo's help in effecting his release. In response to the request, Cammayo had visited Bebania at the New Bilibid Prisons in Muntinglupa and, claiming to be a *compadre* of the former President, had assured the prisoner that he would attend to the latter's papers.

Meanwhile, Executive Secretary Fred Ruiz Castro swore *en masse* in the morning Second Assistant City Fiscal Jose B. Jimenez and 27 assistant fiscals of the City of Manila immediately following the signing of their promotional appointments by President Magsaysay. The ceremony took place at the Malacañang Nepa House.

Secretary Castro also swore into office Ubaldo Carbonell as assistant national treasurer. Carbonell was formerly assistant chief of the backpay unit of the Bureau of the Treasury. He replaces former assistant national treasurer Evaristo Ver, who was retired effective October 26, 1954.

The Cabinet held a special meeting this day presided over by Vice-President Carlos P. Garcia. Owing to the President's inability to attend, the Cabinet held only preliminary discussions on some items in the agenda to be taken up with the Chief Executive at the regular meeting scheduled next Wednesday.

In the afternoon, the President led national leaders in paying last tribute to the late Reps. Gregorio Tan of Samar and Lorenzo Ziga of Albay at necrological services held in the hall of Congress.

The President upon arrival at the Congress at 2:20 p.m. was escorted to the dais, where Senate President Eulogio Rodriguez, Sr., and Acting Speaker Daniel Z. Romualdez had waited for him. The trio

stayed at the dais throughout the necrological services which immediately began upon the President's arrival.

After the rites, the President accompanied by Rodriguez and Romualdez descended from the rostrum and viewed the flag-draped caskets containing the bodies of the late Reps. Tan and Ziga which had lain in state in the Congress hall. The President condoled with the families of the late solons, expressing his personal regrets over the untimely death of the two congressmen.

The necrological orators were Reps. Wenceslao Lagumbay of Laguna and Angel Castaño of Manila.

During the necrological services, Rep. Pedro Trono of Iloilo, who had suffered injuries during the accident with the late solons, entered the session hall and seated himself among his colleagues in the audience. His entrance created a stir among the audience.

The President was accompanied by his aide, Maj. Emilio Borromeo, and Legislative Secretary Jose Nable and Vicente Logarta. He returned to Malacañang immediately after the services.

November 13.—THIS 13th day of the month which often gives apprehension to a good number of people, whether it coincides with a Friday or not, nine councilors, a lawyer, and a woman called on the President and raked Mayor Arsenio H. Lacson with a litany of charges.

Manila Nacionalista Councilors Francis Yuseco, Gonzalo Santos Rivera, Eriberto Remigio, Hermenegildo Gonzaga, Fausto Alberto, Justo Ibay, Leonardo Garcia, and Mariano Santos called this morning on the President and personally filed administrative charges against the mayor. They were accompanied to Malacañang by Antonio Barredo, their counsel, and a woman witness who sobbed out her story for a dramatic touch of how Mayor Arsenio H. Lacson had allegedly wronged her.

The President referred to Justice Secretary Pedro Tuason the administrative charges by the councilors against Mayor Lacson for study and advice "whether a *prima facie* case exists against the respondent mayor." The Chief Executive requested Secretary Tuason to recommend whether "the charges warrant suspension of the mayor pending investigation and final disposition of the case by this office." The President requested Secretary Tuason that he give the matter preferential attention so that he can make his recommendation at the earliest possible time.

The administrative charges filed by the councilors, which involved dishonesty, oppression, and misconduct in office, included several specifications under each charge. The councilors also charged the mayor with allegedly disposing of ₱280,000 public highways fund without the knowledge of the councilors. This expenditure, according to them, was against the law.

The President received the councilors at 9:20 a.m. in the anteroom and talked to them on the charges they had filed against Mayor Lacson for about 45 minutes. He said that he would study the case very carefully before making any decision.

After a harrowing 45-minute conference with the councilors, the President conferred with Secretaries Salvador Araneta, Oscar Ledesma, and Alfredo Montelibano on a more pleasant subject—coffee.

The President approved for implementation a large-scale coffee production program presented to him by the three Cabinet men. The coffee production program is designed to make the Philippines the largest coffee-producing country in the Far East. It will curtail the importation of coffee which amounts at present to ₱7 million a year.

According to the three Cabinet members, the program, if carried through successfully, would net an income of ₱120 million a year and would enable the Philippines to export coffee.

The President directed the various government agencies participating in the program to implement the project. These agencies are the Department of Agriculture and Natural Resources, the Department of Commerce and Industry, the RFC, the NARRA, and the Bureau of Forestry.

The RFC will give out loans of not more than ₱1,000 per hectare to coffee planters, and the maximum loan that a person can get will be ₱20,000. The ₱1,000 per hectare loan will be issued by the RFC in installments.

The Department of Agriculture and Natural Resources will look after the planting and selection of coffee seedlings and the Bureau of Forestry will lease three farms for the planting of coffee. It is also understood that NARRA settlers will be asked to plant coffee in suitable places. The Department of Commerce and Industry has been assigned to undertake the processing and marketing of the coffee products.

To help in the large-scale coffee production, the Government has borrowed the services of Boron Goto, FOA coffee expert from Hawaii. As of now, 18,000 hectares of land are planted to coffee. The target of the program is to plant 160,000 hectares.

The Chief Executive also received a 200-man delegation of poultry raisers from Peñaranda and Papaya, Nueva Ecija, who requested the lowering of the price of poultry feed. The poultry raisers complained that the poultry feed they were buying was being produced locally and that the price was much higher than the cost of eggs. They argued that if the price of poultry feed were not lowered, they would be forced to close down their poultry business. According to the spokesman of the delegation, Alfredo Padolina, they were buying poultry feed at ₱16 per sack but were selling eggs at ₱9 to ₱10 per hundred.

The President promised the poultry raisers that he would lower the price of poultry feed. He ordered PRISCO General Manager Ismael Mathay to import immediately poultry feed and sell it to the poultry raisers at a lower price than what the poultry people were paying the local poultry feed producers.

Aside from Mathay, the President also called Col. Osmundo Mondoñedo, ACCFA chairman, and asked about the progress of the frigerator house being installed by the ACCFA in Polo, Bulacan. Mondoñedo informed the poultry raisers that the ACCFA would start buying and storing eggs after about three or four months when the frigerator will be ready.

The poultry raisers talked to the President for about 30 minutes. They were accompanied by Rep. Celestino Juan of Nueva Ecija.

In the evening the President went to the residence of Defense Undersecretary Jose M. Crisol to greet the latter on his birthday. After talking to some Army officers, the President decided to call a special Cabinet meeting at 5 p.m. the next day.

November 14.—BEING the 18th birthday of his second daughter Mila, the President played the role of a good father by joining the members of his family to hear mass at the Malacañang chapel early in the morning. The President spent the whole day in the Palace, dispensing with his week-end cruise on the *Pagasa*.

In the afternoon, the President presided over a special meeting of the Cabinet and heard a two-hour briefing by Col. Nicanor T. Jimenez, chief of the public affairs office of the Armed Forces, on the Kamlon operations.

In a two-hour meeting with seven members of his Cabinet, ranking government officials, and Army brass, the President launched an ambitious socio-economic development program for Sulu in a determined move to bring about permanent progress and contentment among the people in that part of the country. He directed that all the agencies concerned coordinate their efforts in implementing immediately the following presidential directives:

(1) Sending of land surveyors to survey public lands to facilitate the issuance of land titles and the release of forest land for agricultural purposes;

(2) Education aid in terms of more schoolhouses, textbooks, and employment of native school teachers and officials;

(3) Sending of combined Army-Department of Health, health mobile units;

(4) Construction of more roads with an initial release of ₱100,000;

(5) Improvement of waterworks; and

(6) More aid from the Social Welfare Administration.

Present at the special meeting were Agriculture Secretary Salvador Araneta, Health Secretary Paulino Garcia, Education Secretary Gregorio Hernandez, Jr., Defense Secretary Sotero Cabahug, Public Works Secretary Vicente Orosa, Social Welfare Administrator Pacita Madrigal Warns, Executive Secretary Fred Ruiz Castro, Budget Commissioner Dominador Aytona, Agriculture Undersecretary Jaime Ferrer, Defense Undersecretary Jose M. Crisol, Public Works Undersecretary Juan Paraiso, ACCFA General Manager Osmundo Mondoñedo, General Land Registration Commissioner Antonio Noblejas, Forestry Director Felipe Amos, Director of Lands Zoilo Castrillo, Lt. Gen. Jesus Vargas, AFP chief of staff, Brig. Gen. Eulogio Balao, Captain Rafael Pargas (G-3), Col. Nicanor Jimenez, Col. Romeo Espino, Col. Joaquin Sanchez, Lt. Manuel Syquio, Lt. Col. Benjamin Mata, and Capt. Angelo P. V. Cruz.

Colonel Jimenez gave a briefing on the actual needs of the people of Sulu. The military campaign in that province was not discussed. Jimenez emphasized, however, that there was peace and order in the whole province of Sulu except in the Luuk area, where the Kamlon operations are concentrated.

When informed that 1,894 land patents were pending in Sulu, the President told Secretary Araneta to send more teams of surveyors to hasten the survey of public lands in Sulu and to speed up the issuance of titles. He also directed that portions of reserved forest lands which could be released for agricultural purposes and settlement would be declared as such to enable more settlers to till the soil.

The President stressed that the land distribution problem should be given rush action.

Regarding educational aid to Sulu, the President directed the Army corps of engineers, which is supervising the construction of pre-fabricated schoolhouses, to step up their output and extend priority to Sulu in the distribution of cheap pre-fab barrio schoolhouses. It is estimated that the pre-fab houses would roll out in large numbers by January.

The Chief Executive also directed Education Secretary Hernandez to recommend a Moslem for superindendent of schools of Sulu. He took this step as he was informed that there was need for employing more Moslem teachers and school officials who are in a better position to explain to the Moros the Government's program of amelioration for the province. More Moslem teachers should be appointed to teach in Sulu, he said. In this connection, the President recalled that he had already appointed Makapanton Abbas as the first Moslem judge.

The President told Secretary Hernandez to give more school aid to public schools in Sulu in terms of more desks as it was reported that sometimes school children had to sit on the floor for lack of seats, and to make available more textbooks to be rented to the students.

The President directed this day Executive Secretary Fred Ruiz Castro to wire all provincial governors and city and municipal mayors in the provinces badly affected b ytyphoon *Ruby*, to direct their municipal treasurers to requisition rice from the NARIC. Under this arrangement the municipal treasurers of the stricken towns would sell NARIC rice directly to the people at government prices. The President gave this order to prevent the poor people in the typhoon-ravaged areas from paying exhorbitant prices for rice as a result of the destruction of the rice crops.

A Malacañang spokesman today clarified a story in a sector of the local press to the effect that the Chief Executive had acted to legalize squatter holdings in Davao. Press Secretary J. V. Cruz said, regarding the President's action directing Agriculture Secretary Salvador Araneta to declare 10,000 hectares of land in Mt. Apo available for resettlement among the families already settled there, that it was up for the Bureau of Lands to determine if the settlers were settled on government land. If they are settled on government land, they would be resettled in appropriate settlements, Secretary Cruz said. He added that this policy holds true in other areas where pioneers are already settled. He said it should not be confused as a policy of legalizing squatters on private lands or on government property not available for public settlement.

In the evening, the President formally launched his daughter Mila into society at the Malacañang social hall. He danced with the debutante to the tune of a slow musical piece to open the dance. Later, he danced with her the rhumba.

The affairs was a dinner-dance given by the President and the First Lady to mark their second daughter's debut. Some 300 Manila teenagers attended the gay social.

November 15.—FOLLOWING a taxing evening on the occasion of the coming-out party of his daughter Mila the previous day, the President had another strenuous day at the Palace this day. He received callers at his executive office continuously from 8 a.m. to 12:30 p.m. An estimated total of 800 persons from various parts of the country went in and out of the President's office the whole morning.

The President received a delegation of civic leaders from Bulacan which presented him with a check for some ₱8,000 for the Liberty Wells and the Peace and Amelioration Fund campaigns. The group was accompanied by Gov. Alejo Santos.

Another delegation of Bacolod City officials headed by Mayor Jose Coruña presented a ₱13,502.10-check as partial contribution of their city to the Peace and Amelioration Fund drive. The Bacolod group was accompanied by Rep. Carlos Hilado of Negros Occidental.

Eight LP mayors from Bulacan headed by Charles Hollman, Jr., of Calumpit, president of the province's Mayors' League, lodged their protest against alleged persecution of LP municipal officials and employees by their provincial governor.

Representatives of the Philippine Marine Officers Guild headed by Capt. Salvador Yenko registered a vigorous protest against Customs Commissioner Edilberto David, who, they said, had been permitting the replacement of striking marine officers with non-guild members, thus nullifying their right of collective bargaining with the shipping companies against which they had staged the strike.

A large delegation of small bus operators from Candaba, Pampanga, headed by Mayor Anastacio Gallardo also protested against alleged discriminatory practices of the Public Service Commission. This group, which was so large that the President had to go down to the Malacañang grounds to receive it, was accompanied by Gov. Rafael Lazatin.

A group of farmers from Pakil, Laguna, requested the subdivision of a public lands in their locality and its distribution to poor farmers who had been working on it for the last 20 years. The group was accompanied by Rep. Wenceslao Lagumbay.

A delegation from Mindanao headed by Reps. Domocao Alonto of Lanao and D. Luminog Mangelen of Cotabato urged the President to postpone his plane trip to their localities which had been scheduled for Tuesday, November 16, owing to inclement weather over the Visayan area. The Chief Executive postponed his projected Mindanao visit until next week.

Other delegations were brought in by Sen. Emmanuel Pelaez; Reps. Isidro Kintanar of Cebu, Angel M. Castaño of Manila, Lamberto Macias of Negros Oriental, Tobias Fornier of Antique, Felipe Garduque of Cagayan, Apolinario Apacible of Batangas, Pedro Lopez of Cebu, Cornelio

Villareal of Capiz, Jose T. Cajulis, of Cavite, Alberto Q. Ubay of Zamboanga del Norte; and Govs. Vicente Constantino of Quezon and Felipe Azcuña of Zamboanga del Norte.

At noon, the President administered the oath of office to Board Member Antonio O. Corpuz as acting governor of Nueva Ecija, vice Leopoldo Diaz, who had applied for a few months' leave of absence.

Present at the induction were Reps. Jose O. Corpus and Celestino Juan, Mayors Teodoro P. Santiago of Cabanatuan City and Teodosio Valenton of Talavera, and a large delegation of city and municipal officials.

The President also inducted Celestino Ramos as assistant city fiscal of Manila, vice Primitivo Cammayo, dismissed; and LP Governor Salvador Escudero of Sorsogon, who formally joined the Nacionalista Party. Escudero has been scheduled to be inducted into the NP earlier but Rep. Peralta had obtained a postponement. The induction finally came through after Peralta had endorsed Escudero's affiliation.

Present at Escudero's induction were Rep. Vicente Peralta and 14 Sorsogon mayors mostly Liberals; namely, Manuel Olondriz of Juban, Gregorio Gajo of Irosin, Leodegario Gillego of Matnog, Jose Espineda of Gubat, Juan Dama of Castillo, Eufracio Madronero of Pilar, Sergio Fulay of Barcelona, Agustin Abetria of Donsol, Maximo C. Lee of Magallanes, Jaime Reyes of Bulusan, Leopoldo Frilles of Sta. Magdalena, Salvador Escudero, Jr., of Casiguran, Santos Dagnalan of Sorsogon, and Quirico Lustistica of Prieto Diaz.

The President issued this day Administrative Order No. 74, creating a special executive committee to implement the revised Motor Vehicles Law and to improve its operational setup and services.

The committee is authorized to introduce innovations and make changes in the personnel assignment, office forms, policies, and procedures of the Motor Vehicles Office in order to carry out more effectively the provisions of the laws on motor vehicles.

The President also signed Administrative Order No. 75, relieving Ignacio T. Cui of Calbayog City as chief of the fire department on account of partisan political activity. Cui was charged with electioneering activities during the last national elections held in November 1953. After a special investigation, he was found to have acted as campaign manager of the Liberal Party in Calbayog City, appointing leaders of the Liberal Party in various districts and barrios of the city. He was also found guilty of having distributed relief goods, intended for typhoon victims, at the polling places on election day.

In the afternoon, the President ordered the recreation of the traffic division of the Philippine Constabulary in order to make more effective the coordination of traffic enforcement all over the country. He gave the order to Brig. Gen. Florencio Selga through Col. Mariano Azurin.

Col. Azurin, who had been recently appointed by the President as general traffic officer, had been charged with tightening of the enforcement of traffic rules and regulations throughout the country to prevent motor accidents on the highways.

The Chief Executive called Azurin to Malacañang to find out how his duties as general traffic officer could be made more effective. The President told Azurin that in the recreation of the traffic division of the PC, special traffic officers should be selected. The President said that these traffic officers must be thoroughly familiar with all traffic laws and regulations and must have received training in their effective enforcement. He said in addition, they should be able to detect mechanical defects of vehicles which make them unsafe to take to the road.

The President directed that all provincial commanders report daily by radio to the PC chief, through the general traffic officer, all violations of traffic in their respective areas. He said that he wanted a consolidated monthly report submitted to him so that he could have a complete picture of the progress of the enforcement of Motor Vehicles Laws and traffic regulations.

Brig. Gen. Florencio Selga, PC chief, said in the evening that with the President's order, he would take immediate steps in re-organizing the traffic unit. He said that with the re-organization of the division, rules and regulations would be immediately drafted, and the organization of the personnel would be made and submitted to the President for approval.

Selga said that before the war the PC had a traffic division which took care of the enforcement of traffic laws. He said the Philippines was then divided into eight or ten districts with a commanding officer for each sector. He said that the PC officers in each district worked in coordination with the Motor Vehicles Office and the Public Service Commission.

The President in the evening directed Executive Secretary Fred Ruiz Castro to wire officials of typhoon-stricken provinces to submit by radio in three days the extent of destruction in their respective areas and the estimates of the cost of reconstruction.

The President ordered all district engineers to survey the destruction of school buildings, roads, and bridges. He said that this survey should include the estimated cost of reconstructing these public properties. He also wanted figures on crop damages and destruction.

The Chief Executive directed district health officers to submit their requisitions for medical supplies to prevent the outbreak of epidemic among the typhoon-stricken inhabitants. He said that he wanted these reports wired to him in three days so that appropriate action could be taken by Malacañang.

Limbering up after a hectic morning, the President left the Palace at 4:30 in the afternoon and played softball with his aides on the Luneta. The President has lately been switching his athletic activities from horseback riding to softball.

November 16.—OWING to inclement weather, the President cancelled his scheduled plane trip to Lanao this morning. However, he braved darkening skies and, together with the First Lady, Agriculture Undersecretary Jaime N. Ferrer, Rep. Wenceslao Lagumbay, and Malacañang newsmen, motored to the Huk-infested barrio of Kapatalan, Siniloan, Laguna, at the foothills of the Sierra Madre Mountains.

The presidential party left Malacañang about 8:30 a.m. without any motorcycle escort and found itself most of the time entangled in traffic jams. Slowing down at a road junction in Calamba, Laguna, shortly before 10 a.m., the President and the First Lady were spotted by town residents who hastily summoned a motorcycle cop to escort the presidential car wherever it was going. The President declined the escort for wishing to guide him, pointing out that the cop was needed more in the enforcement of traffic regulations in the highway.

The President stopped several times along the way and dropped in at the headquarters of a BCT detachment to confer with the unit commander who gave him a fill-in on the peace-and-order situations in their respective sectors.

Arriving at the settlement site in barrio Kapatalan shortly before 12 noon, the President and the First Lady were enthusiastically greeted by thoroughly surprised farmers who had not expected that the President would visit them only a few days after they had submitted their request for the release of some 800 hectares of government farmland in that barrio.

Exactly a week earlier, the farmers had sent a delegation to Malacañang to present their petition to the President. The President surprised the farmers when he delivered to them personally his reply to the petition. He announced to them that he was releasing 700 hectares of the rich farmland for permanent settlement by them.

In a brief and impromptu meeting at the settlement site, the President told the farmers:

"You are probably surprised that I have come here myself to look into the problem you took up with me at Malacañang. Well, I want you to know that to this Administration, the problems of the rural areas,

the problem of land settlement and land distribution, rate a very high priority. This is why I am here.

"After you saw me at Malacañang, I immediately assigned officials of the Department of Agriculture and Natural Resources to come here and look into your situation. They have organized survey parties. Now that the Government has decided to release these lands to you, these survey parties will come here immediately and begin the task of subdivision, so that you can have your lots and titles at the earliest date. Cooperate with them and the job will be finished quickly."

After his brief talk, the President was given a warm ovation by the farmers.

Newsmen covering Malacañang who accompanied the President were introduced to an interesting aspect of presidential inspection trips when they lunched at a BCT headquarters along the route on canned sardines and salmon brought by the presidential party from Malacañang. During lunch, the President told the newsmen he had ordered this procedure followed on his trips because he did not want to impose on the hospitality of the townspeople and also owing to the elastic schedule followed on such trips.

"All we've got to worry about," the President quipped to newsmen, "is where to get some rice. We bring our own food."

The President said each family will be allotted about four or five hectares. He informed the farmers that after they had been awarded titles to their holdings, the Government, through the RFC, will further help them by granting them loans up to ₱700 each to start them on their farms.

Inquiring into the needs of the place, the farmers informed the President that among the pressing problems of the community were the absence of a schoolhouse and adequate water supply. The President said that the government would provide materials for the construction of a school-building and a water system. He asked local authorities to survey the place for a potential source of water supply.

Located at about 1,300 feet above sea level, the place is said to be very suitable for the planting of coffee. The President urged the farmers to learn improved methods of coffee planting. He pointed out that the country is importing ₱700 million worth of coffee every year from the United States and other countries. He added he saw no reason why the country should be spending so much to import a commodity which could be successfully raised locally.

The President and the First Lady stayed in the area for about one hour, chatting with the rural folks and inquiring into general conditions in the locality. While going about the place, the President came upon a Huk amazon who recently surrendered to the authorities after staying in the mountains for four years.

Dominga Porciuncula, 23, the ex-Huk, told the President she had been brought to the mountains by her Huk-husband. She had been told that the dissidents' cause would win over the government forces, but after waiting in vain for four years for the so-called "victory" she decided to give up to the authorities and return to her parents.

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The President and his party had lunch at the 16th BCT outpost at Pañgil, Laguna. They were joined at lunch by Gov. Dominador Chipeco, who had caught up with the party at the outpost.

The President and the First Lady returned to Malacañang about 4 p.m.

In the afternoon the President received the opinion of Secretary of Justice Pedro Tuason on the charges that were forwarded to him against the mayor of Manila, Hon. Arsenio H. Lacson. Secretary Tuason made the following pertinent remarks on the case:

"By and large, I am of the belief that on the surface, the charges are insufficient to justify drastic action at this stage of the case.

"My recommendation is that an investigation be ordered, and that the advisability of suspending the respondent preventively be considered by the investigator in the light of new developments of the case, after or during the investigation and after a clearer showing has been made by the prosecution.

"While reasonable suspicion of corruption or dereliction of duty is, as a general rule, enough justification for suspending an appointive officer or employee before hearing on the merits, caution has to be exercised when elective officials are concerned, especially the mayor of a big metropolis. The interest and will of the electorate have to be taken into account."

On the basis of these recommendations, the President formed immediately a committee composed of Dean Vicente C. Sinco, chairman; Pedro Gimenez, deputy auditor general, member; and Atty. Felix Q. Antonio, special prosecutor in the Department of Justice, member, to investigate the charges. He directed the committee to start immediately.

Before leaving Malacañang for Laguna, the President sent a telegram to former President Elpidio Quirino, extending to him on the occasion of his 64th birthday wishes for his "continued good health and happiness in your retirement . . . ."

The President also sent a memorandum to Col. Agustin Gabriel, chief of the National Intelligence Coordinating Agency, directing him to coordinate the work of different agencies handling the screening of Chinese residents, for "repeated screenings for the same purpose not only entail too much inconvenience on the part of the screened Chinese but will also be a waste of time and effort for the screening agencies concerned."

The directive was sent in view of the alarming rate of complaints being received by Malacañang from the Chinese community in Manila. It was suggested in the directive that liaison with the Chinese Embassy regarding screening of Chinese residents be made in devising ways and means of obviating duplication of work.

The President also granted this day eight conditional pardons and one commutation of sentence on the recommendation of the Board of Pardons and Parole.

November 17.—STARTING the day in good humor, the President immediately ordered the release of ₱50,000 from his contingent fund for the construction of barrio roads in Mindoro Oriental, at the request of Gov. Francisco Infantado. Infantado called at Malacañang with Provincial Board Member Jose Basa, Provincial Treasurer Nicolas Galvez, and some prominent residents of Mindoro Oriental.

The Chief Executive also received the members of the Philippine delegation to the United Nations Community Development Conference to be held in Manila from November 29 to December 9, 1954. Members of the delegation were Social Welfare Administrator Pacita M. Warns, chairman; and Health Undersecretary Rafael Tumbokon, Agricultural Extension Director Cayetano Pineda, Public Schools Assistant Director Pedro Guiang, Manuel Buenafe, Ramon Binanira, and Manuel Torres, members. United Nations officials Edward Chadwick and C. T. Chang were also with the group.

Another group received were the members of the Philippine Tobacco Administration who presented to the President the budget and plans of the board. The group was composed of Primitivo Tugade, chairman; and Jose Samson, Eliodoro Garcia, Agaton Yaranon, and Pablo del Moral, members.

Other callers included Reps. Samuel Reyes of Isabela and Emilio Cortez of Pampanga, Gov. Adelmo Camacho of Bataan, Isabela District Engineer Jose Villaroel, and Mayor Pedro Lactao of Manlig, Isabela.

Rep. Reyes, Engineer Villaroel, and Mayor Lactao requested the Chief Executive to release ₱100,000 for the construction of barrio roads in Isabela.

The President received callers until 10 a.m. after which he presided over the regular meeting of the Cabinet.

President Magsaysay and his Cabinet in their meeting this day sought other avenues to provide the country with sufficient rice to be sold at reasonable prices. The President approved in principle the purchase by the Philippine Government of some 300,000 tons of rice from the United States Government. He directed a special committee composed of OEC Administrator Alfredo Montelibano, as chairman, and Agriculture Secretary Salvador Araneta, Defense Secretary Sotero Cabahug, and Public Works Secretary Vicente Orosa, as members, to study the details of the implementation of this project.

The proposed purchase of the rice will be made possible under the surplus commodities program as authorized by Public Law No. 480 of the U. S. Congress, approved on July 10, 1954, otherwise known as the Agricultural Trade Development Assistance Act of 1954.

OEC Administrator Alfredo Montelibano, who had made a preliminary study of this purchase in talks with FOA chief, Col. Harry A. Brenn, reported to the Cabinet that in this purchase, pesos, not dollars, would be used. He said that arrangements were being made in such a way that the proceeds from the sale of the 300,000 tons which will amount to some ₱100 million will be earmarked for the Philippine Government's development program, especially for high priority projects like irrigation systems, hydroelectric systems, and port works. He added that arrangements would be made to have payment staggered on a 10-year installment plan. He, however, emphasized that one of the requirements of this transaction was that, prior to closing the contract, the Philippine Government should present to he U. S. Government a concrete plan showing how the proceeds from the sale of rice to be imported from the United States would be utilized.

During the Cabinet meeting, Agriculture Secretary Araneta informed the President that his department had discovered that manganese ore is effective cure against the destructive mosaic disease afflicting abaca plantations. Araneta said manganese ore had been tried on a small scale in the department's plants in Manila and it was found to be effective in killing the virus that causes the disease. He said he would try it on a bigger scale in the plantations in the provinces.

Secretary Araneta said that his department would buy 500 tons of manganese ore from Bohol for distribution in the mosaic-infested abaca plantations. He said this antidote against the mosaic disease is very cheap as it would cost only three centavos to apply it on an abaca hill.

The President during the Cabinet meeting expressed his desire to foster constructive discussion on the minimum wage law controversy and to have public interest in the matter stimulated to guide the Government as to what steps to take. He created a presidential committee composed of Defense Secretary Sotero Cabahug, as chairman, and Dean Jorge Bocobo, Dr. Gaudencio Garcia, Dr. Amando Dalisay, and Fr. Pacifico Ortiz, S. J., as members. He charged the committee with the duty of listening to a cross-section of public opinion on the matter. He told the members to start their public hearings without delay.

President Magsaysay was informed by Assistant PCAC Chairman Nicanor Maronilla-Seva, who represented Chairman Manuel P. Manahan, who was out on an inspection trip, that out of the 47,417 cases of complaints received by the PCAC, 14,582 had been solved and considered closed, leaving some 32,835 cases to be followed through.

The President was pleased with the work of the PCAC but told Seva that he wanted the backlog of cases to be solved within the remaining days

of the calendar year. The President told Seva to seek ways and means of enlisting the help of personnel in other government offices to help follow-through those still pending cases. Seva said that around 8,000 of the remaining cases were about backpay claims.

Seva said that the cases considered pertained to request for construction of artesian wells, irrigation systems, roads, bridges, canals, and ferries; complaints on alleged abuses of government officials; delay in the issuance of land titles; removal of employees; and loss of postal money orders.

Early this afternoon, President Magsaysay made a surprise visit to the NARIC compound on Azcarraga and the NARIC bodegas at the National Development compound at Pureza to check reports that the rice imported from Pakistan was rotting. He also wished to know how fast this imported rice was being shipped to the provinces to meet the needs of the people, especially of those in the typhoon-stricken areas.

Leaving Malacañang at about 2:30 p.m., the President went to the NARIC compound accompanied by his aide, Maj. Emilio Borromeo. He was informed that the members of the NARIC board of directors were holding a meeting at the Manila Hotel. Maj. Gregorio Yambao and Capt. Enrique Galang, who met the President, showed him around the compound.

The President inspected the retailer's booths where he noticed a large number of people waiting for their turn to purchase rice. Noticing the slow manner in which rice was being sold, the President ordered Maj. Yambao to speed up servicing the customers. He ordered the opening of some more booths, especially those which he noticed had been closed.

While inspecting the bootns, the President met Mayor E. Mendoza of Bocaue, Bulacan, who showed the President a requisition of his town for 1,500 sacks of rice which were badly needed by the townspeople who had been affected by typhoon *Ruby*.

Upon being informed by the mayor that his requisition could not be attended to because the NARIC officials supposed to sign it was attending a board meeting, the President got hold of the requisition and marked it "expedite" with his signature. He motored to the NDC compound at Pureza, where the stocks of Pakistani rice were stored.

The President noticed upon his arrival that several trucks were being loaded with rice to be taken to provinces stricken by typhoon *Ruby*. He learned from the rice customers at the compound that the Pakistani rice was good to eat and that it was in big demand in the provinces.

The President went through the bodegas at the compound and examined for himself bags of stored rice. He saw some bags which showed signs of rotting rice. He was informed that according to estimates some 10 to 20 per cent of the rice was in bad condition. He asked one of the NARIC employees to give him a ganta of Pakistani rice. He said that he would have this sample cooked at Malacañang to test its quality.

The President was accompanied around by NDC General Manager Jose Panganiban.

The President after returning from the NARIC extended a glad hand of welcome to the Philippine basketball team which called on him to pay its respects.

In welcoming the victorious team, the President said, "You certainly put the Philippines on the map."

The President said that he was very glad when he learned that the team had won the third place in the world championship contest. He added that his daughter Milagros, who is a basketball fan, was so happy that she told her father she would like to be with him to receive the returning champions.

The basketball team was accompanied to Malacañang by PAAF President Jorge B. Vargas, Solicitor General Ambrosio Padilla, head of the delegation, and Coach Herminio Silva. The basketball players present were Lauro Mumar, team captain; Carlos Loyzaga, co-captain; and Rafael Barretto, Francisco Rabat, and Ponciano Saldaña. Some members of the team could not join the group that called on the President.

During the call which was made at the President's study, Vargas informed the President that during the closing day of the games, Solicitor General Padilla was asked by all the participating countries to represent them in delivering a speech. Padilla informed the President that Loyzaga was chosen as one of the 10 best basketball players in the meet. He also told the President that the boys were very happy when they received President Magsaysay's telegram congratulating them for their victory.

November 18.—EARLY this morning, the President held a breakfast conference with Senate President Eulogio Rodriguez, Sr. The two discussed the political situation.

The President also conferred with Lt. Col. Ramon Gelvezon, Cavite provincial commander, who reported that the general peace-and-order conditions in the province had been "normalized." Gelvezon made certain recommendations which were referred to Gen. Vargas for comment.

The President began receiving callers about 8 a.m. He received about 400 callers morning and afternoon.

Sen. Jose C. Locsin presented the President with a ₱100-check as his personal contribution to the Children's Christmas festival at Malacañang, sponsored by Mrs. Magsaysay. Sen. Locsin delivered a ₱500-check on behalf of Senate President Rodriguez for the traditional festival given yearly by the nation's First Lady.

A large delegation of student pensionados from non-Christian provinces currently studying in different colleges and universities in Manila presented the President with a petition seeking the increase of their monthly allowances from ₱60 to ₱80 a month. Accompanied by Sen. Tomas Cabili, the group also requested that scholars among the pensionados be given 75 per cent of the savings derived by the Government from their non-payment of tuition and matriculation fees.

Other callers in the morning included Sen. Manuel C. Briones, Reps. Jose Aldeguer of Iloilo and Serafin Salvador of Rizal, Govs. Juan Triviño of Camarines Sur and Alejandro Almendras of Davao, Commerce Secretary Oscar Ledesma, and MRR Manager Salvador Villa.

The President this morning administered the oath of office to Pedro Sevilla as fiscal of Quezon City, vice Jose Fernandez, who had been appointed judge of the court of first instance of Bukidnon.

Following the induction, the President held a conference with the House special committee on Mindanao and Sulu composed of Reps. Domocao Alonto of Lanao, chairman, and Lunimog Mangelen of Cotabato and Ombra Amilbangsa of Sulu, members, who formally registered their protest against the reported airforce strafing of Moro vintas in Sulu. It was agreed at the conference that the Army will conduct a thorough investigation of the incident and submit its findings to the committee. It was also agreed that the House committee will institute its own probe in case it is not satisfied with the AFP's investigations. Present at the conference was Lieut. Gen. Jesus Vargas, Armed Forces chief of staff.

In the afternoon, the President received three members of the U. P. board of regents, headed by Education Secretary Gregorio Hernandez, Jr. The President gave them copies of the Castro committee report on hazing in the State University. With Secretary Hernandez were Dr. Vidal A. Tan, U. P. president, and Prof. Vicente Lontok.

After receiving the U. P. regents, the President received officials of the Bureau of Internal Revenue, headed by Collector J. Antonio Araneta and Jose Aranas, chief of the BIR-NBI team. They informed the Chief Executive of the increase in tax collections.

The President was pleased with the report and, in a sudden flush of good humor, treated the BIR officials to a merienda at the Palace. He also promised to give them increased appropriations in the coming budget.

The Chief Executive ordered the NARIC to send rice to Bagabag, Nueva Vizcaya, at the request of a 40-man delegation of farmers who informed him that they did not have enough rice. Headed by Venancio Coloma, president of the Bagabag Farmers Association and the Bagabag Farmers

Cooperative Marketing Association, the delegation consisted of farmers and *teniente del barrios.*

Another request of the Bagabag farmers was for the construction of an irrigation system in their municipality. The President directed the Department of Public Works and Communications to have the district engineer in Nueva Vizcaya survey the town for the construction of the system.

Mayor Alfredo Briones of Lupao, Nueva Ecija, headed a delegation which asked the President for pre-fabricated schoolhouses and some financial aid to replace and reconstruct their barrio schoolhouse. The President directed Col. Chanco, chief of the AFP corps of engineers, to deliver three pre-fab schoolhouses to Lupao. He also ordered Budget Commissioner Dominador Aytona to release ₱4,000 to the PTA of Lupao for the construction of some of the damaged schoolhouses.

Rep. Arturo Tolentino of Manila, who had just arrived from the United States, was congratulated by the President for his services as delegate to the United Nations. Tolentino called on the President and reported on his accomplishments as Philippine delegate to the special political and legal committee of the United Nations. He came home to attend the meetings of the reorganization commission of which he is a member. The Manila solon had been a member of the U. N. special political committee even when he was a minority member of the lower house.

Another delegation received by the President was composed of some squatters from Harrison Park who came to seek the help of the Chief Executive in the acquisition of the Fabie estate in Paco. The squatters, who were given 10 days by Manila Mayor Arsenio Lacson to leave Harrison Park, were accompanied by Rep. Augusto Francisco and Councilor Justo Ibay.

The President said he could not personally intervene to have the Government buy the Fabie estate for the squatters because one of the owners of the estate is his relative. He suggested to the squaters, however, to buy the estate themselves and mortgage it to the RFC. He said that if the estate was mortgaged to the RFC, the payment of the estate in installments would be done by the RFC. The Chief Executive said that the RFC would be glad to be of help to the squatters who numbered about 500 families.

Agriculture Undersecretary Jaime Ferrer and Lands Director Zoilo Castrillo reported to the President on the progress of the subdivision project in the Davao penal colony. The President told them to hurry up the subdivision so that hundreds of settlers could be settled. The President's order to facilitate the subdivision of the 6,600-hectare land was in line with his desire to permanently collect in Davao penal colony hundreds of settlers who had settled in various places in the provinces.

The President also received W. Richard Jeeves, vice-president and director of overseas operations of Parke and Davis, who is here for the inauguration of the antibiotic laboratory which his company constructed.

Other afternoon callers of the President included Gov. Dominador Chipeco of Laguna, Mayor Amado Santiago of Cabanatuan City, and L. B. Kinports, vice-president of the Orient region of Northwest Airlines.

In the evening, the President named Judge Salvador Esguerra and Executive Secretary Fred Ruiz Castro to study whether, in the light of Judge Bienvenido Tan's verdict acquitting Manila Police Chief Telesfore Tenorio of complicity in the theft of cigarettes from the U. S. Military Port in Manila in 1950, the administrative charges against Tenorio should still be pressed.

A Malacañang spokesman said the dismissal of the criminal case does not automatically quash the administrative charges against a respondent.

November 19.— TO FULFILL another engagement as wedding sponsor, the President woke up very early in the morning and motored to the Paules church on San Marcelino. He stood sponsor at the wedding of one of his aides, Capt. Jose Estrella, and Pacita Singson, daughter of Mr. and Mrs. Vicente Singson Encarnacion.

After the Estrella-Singson wedding, the President, accompanied by the First Lady, visited Sen. Esteban Abada at the Mary Johnston Hospital, where the Negros senator has been confined for the last several days. Sens. Emmanuel Pelaez and Tomas Cabili also accompanied the President to the hospital.

Upon being informed that Mariano P. Balgos, No. 3 local communist, had been killed in barrio Buyo, Manito, Albay, by a team of scout rangers, the President immediately contacted Lieut. Jesus Vargas, chief of staff, to check on the veracity of the report he received from the public information office of the Armed Forces. He instructed Gen. Vargas to fly to Legaspi to confirm the report.

When he received a radio message from Gen. Vargas that Balgos had really been killed, the President promoted five officers and 25 enlisted men of the 24th BCT which composed the Scout Rangers teams which brought to a bloody end the career of the 3rd ranking communist leader of the country. He approved on-the-spot promotions of the 25 enlisted men involved in the actual assault on the Huk leader, and the temporary promotions of Majors Rafael Ileto, Ranger commander, Tomas Caringa, and Romeo Hanasan, battalion commander; and 2nd Lts. Honorato Galan and Delfin Panelo, team leaders. Gen. Vargas, who flew to Legaspi, recommended their promotions.

In a statement issued in the evening, the President commended the Armed Forces for the liquidation of Balgos, who had ₱50,000 prize on his head. He said the slaying of Balgos was another step towards the restoration of complete peace and order in the country.

November 20.—THE PRESIDENT had a breakfast conference this morning with visiting U. S. Congressmen John M. Vorys (D, Ohio) and James P. Richards (R, South Carolina). They were accompanied to Malacañang by Ambassador Raymond A. Spruance, Counselor Charles Burrows, and Col. Harry Brenn, FOA chief. Others present were Defense Secretary Sotero Cabahug, Executive Secretary Fred Ruiz Castro, Foreign Affairs Undersecretary Raul Manglapus, and Ambassador Felino Neri. The visiting congressmen are in the Philippines in the course of their inspection of FOA operations. Col. Brenn said he was taking them out to the provinces to inspect FOA projects.

The President then received in his study Minister Roberto Regala to Australia, who paid his respects to the Chief Executive following his arrival from Australia the other day. Regala took up with the President the plan of increasing trade with Australia. This trade is expected to be conducted under special licenses. Under this arrangement the Philippines will send lumber to Australia and get from that country cattle, butter, and powdered milk.

The Chief Executive told Regala to confer with Acting CB Gov. Andres Castillo to work out with him the details regarding this matter.

Minister Regala conveyed to the President the official invitation of the Australian Government extended by the Right Honorable Richard Casey to President Magsaysay to visit Australia. The Australian Government also expressed its best wishes to the Philippine Government and the Filipino people. Regala also conveyed to the President Minister Casey's appreciation for the successful organization and handling of the recent SEATO conference.

The President congratulated Regala for the good work he had been doing in Australia.

The President directed this morning Executive Secretary Fred Ruiz Castro to form a committee to study plans for the Walled City; whether to conserve it as a national shrine, or to make it a business or a residential district.

The President appointed Anselmo Alquinto, chairman of National Planning Commission, as chairman of the presidential committee, with Captain Andres O. Hizon, Juan Nakpil, Oscar Arellano, and Carlos da Silva as members.

The President endorsed the Tala Leprosarium fund drive sponsored by the College of Law of the University of Sto. Tomas as he handed in his personal contribution to the drive in a simple ceremony held at Malacanang this morning. The ceremony marked the opening of the fund campaign for the benefit of inmates of the Tala Leprosarium in Tala, Rizal. The President's contribution amounting to ₱100 was received by Fr. Jose Blanco, regent of the U. S. T. College of Law, who headed a delegation of student leaders spearheading the campaign.

Fr. Blanco informed the President that this was the first time a Chief Executive endorsed the drive undertaken yearly by U. S. T. students for the unfortunate leprous patients. Also with the group were Dean Ramon Oben; Jesus Hervas, campaign adviser; and Miss Angelina Gonzalez, student chairman of this year's drive.

Implementing his six-point socio-economic development program for Sulu, the President today created a presidential action committee on Sulu affairs. The committee is composed of the governor of Sulu; a representative of the Department of National Defense, vice-chairman and coordinator; and a representative of the Department of Justice, two representatives of the Department of Finance, a representative of the Department of Public Works and Communications, a representative of the Department of Education, a representative of the Department of Health, three representatives of the Department of Agriculture and Natural Resources, a representative of the Social Welfare Administration, a representative of the Office of Economic Coordination, a representative of the Agricultural Credit and Cooperative Financing Administration, and the Sulu PC provincial commander, as members.

In his Administrative Order No. 80, the President said the socio-economic problems in Sulu demand immediate solution through the concerted and coordinated efforts of the different departments and offices of the government in the execution of socio-economic projects.

He directed the committee to study, plan, coordinate, and execute the projects on education, health, land surveys and resettlement, public works, social aid and welfare, labor placement directed by the President, and such other socio-economic measures as it may deem necessary for the amelioration of the people of Sulu. The President also directed the committee to consult with prominent residents and the people of Sulu in the implementation of these projects. The committee was further directed to render a quarterly report on the progress of its activities to the President.

The President also signed Administrative Order No. 79, creating the national Rizal Day committee to make arrangements for the 58th anniversary celebration of Rizal Day on December 30, 1954.

The committee is composed of Education Secretary Gregorio Hernandez, Jr., as chairman. Members are Labor Secretary Eleuterio Adevoso, Social Welfare Administrator Pacita M. Warns, Justice Undersecretary Jesus G. Barrera, Press Secretary J. V. Cruz, Philippine Charity Sweepstakes Board of Directors Chairman Manuel Gonzalez, U. P. President Vidal A. Tan, Grand Commander of the Knights of Rizal Teodoro Evangelista, and Grand Commander of the Manila Chapter of the Knights of Rizal Federico Calero. Prof. Vicente Lontok is member and secretary of the committee.

The committee is entrusted with the task of making all the necessary arrangements for the fitting celebration of Rizal Day throughout the Philippines and for securing the cooperation of all government and private instrumentalities to insure its successful observance.

The President moreover signed Proclamation No. 92, declaring Wednesday, November 24, a special public holiday in Dumaguete City. Occassion for this declaration is the anniversary of the organization of the City of Dumaguete.

In the afternoon, the President congratulated Col. Alfredo M. Santos, commanding officer of the 2nd MA, and his officers and men on the killing of No. 3 Huk leader Mariano Balgos. Col. Santos called on the Pres-

ident together with Maj. Benjamin Ponce, commanding officer of the camp compliment in Canluban; Capt. Victorino del Pilar, secretary of the 2nd MA general staff; Capt. Hector Saquin, PIO; and Lt. Saturnino R. Eugenio.

The President said he was very happy over the good work of Col. Santos and his men and of all those responsible for the bagging of Balgos. He praised Santos for his good qualities as a commanding officer, especially for his not being jealous of the feats of his men. This quality, the President added, has endeared him to all and has given enthusiasm to officers and men who work under his command.

The President told Santos to keep up the good work. Santos answered that he would do his best until the other Huk leaders had been captured or liquidated.

On recommendation of the Board of Pardons and Parole, the President this afternoon granted three conditional pardons and two special absolute pardons to insular prisoners.

November 21.—IMPLEMENTING his pledge to build artesian wells in the rural areas to help promote the health of the people, the President this day released to Public Works Secretary Vicente Orosa the additional sum of ₱2 million for the drilling and construction of artesian wells. With this sum, 600 artesian wells will be dug in 52 provinces and in 11 cities. Construction of these wells will start beginning December and completed about June 30, 1955.

Secretary Orosa said that as of November 8 this year, 1,061 artesian wells have already been finished with 109 still being drilled. These give a total of 1,170 wells constructed under the new administration as compared to only 300 wells constructed during the preceding year.

In the afternoon, the President, together with the First Lady and their children, motored to the Lyric Theatre, where they saw the movie, *A Star Is Born*. After seeing the show, the President returned to Malacañang.

In the evening, the President dismissed the administrative case filed with Malacañang against Col. Telesforo Tenorio, Manila's chief of police, and ordered his immediate reinstatement in office. The President's action followed Tenorio's acquittal of the crime of qualified theft by the court of first instance of Manila.

The President in his administrative order said that as the act constituting the offense charged had been the basis of the administrative case filed against Tenorio with Malacañang, resulting in his suspension, and in view of Tenorio's acquittal, the Chief Executive dismissed the administrative case and ordered Tenorio's immediate reinstatement.

November 22.—AFTER having breakfast with Mrs. Magsaysay, the President received callers.

The President approved today the release of ₱70,000 for a flood control project at the Maluyo River in Bangar, La Union. He approved the release after talking to Rep. Francisco Ortega and four mayors from La Union who told him that typhoon *Ruby* had caused the Maluyo River to overflow and flood many parts of the province. The La Union mayors who called on the President were Anacleto Lucina of Bangar, Ciriaco Nodora of Luna, Antonio de Vera of Aringay, and Antonio Aquino of San Juan.

The Chief Executive received a petition to extend the carabao ban for another year from mayors in the 2nd district of Nueva Ecija. The town mayors were accompanied by Rep. Celestino Juan. The mayors and farmers said the carabao ban was beneficial to them. They cited the strong carabaos that they were using in plowing the fields. The President said he would study their petition.

The President released ₱5,000 for the construction of a puericulture center in Pagsanjan, Laguna, at the request of women residents of the town who were accompanied by Rep. Wenceslao R. Lagumbay.

Other callers of the President included Sen. Macario Peralta, Jr., Director Manuel Sumulong of Animal Industry, Rep. Florencio Moreno

of Romblon, and Dr. Clarence Hulford of the National Bank of Commerce of Seattle, Washington, U. S. A., who was accompanied to Malacañang by Jesus Jacinto and Augusto Sevilla.

At noon, the President gave a luncheon in honor of Robert L. Garner, visiting vice-president of the International Bank for Reconstruction and Development, who arrived in Manila in the morning for a three-day survey of the potential resources of this country. Accompanied by Joseph Rucinski, deputy director of the World Bank's Department for Asia and the Middle East, and by William D. S. Fraser, an assistant, Garner will visit the abaca industries in Davao, the power and chemical plants in Maria Cristina, the sugar industries in Negros, the hydro-electric project in Ambuklao, and the multi-purpose project in Marikina, Rizal.

The President this morning received callers at his executive office up to 12 noon.

Mrs. Rosario Balgos, the widow of the No. 3 Huk leader, called to request financial assistance for miscellaneous expenses of the family. Her husband had been killed in military operations in Albay. The President gave the widow ₱500. Mrs. Balgos was accompanied to Malacañang by her daughter, Dolores, and her son-in-law, Lazaro de la Cruz.

A delegation composed of newly-elected officers of the United Technological Organization of the Philippines called to present a resolution informing the President that he had been unanimously elected honorary chairman of the organization and to invite him to be guest of honor at the UTOP congress in January.

Headed by Andres Hizon, UTOP president, the delegation included George Adamson, first vice-president; Gabino de Leon, Jr., secretary; Public Works Secretary Vicente Orosa and Carlos E. Da Silva, members of the board of governors; Cesar H. Concio and Jose E. Espinosa, outgoing president and secretary, respectively.

Another delegation composed of new officers of the United Disabled Veterans Association of the Philippines headed by Manuel Vergel, president, called to pay their respects following their induction to office by Defense Undersecretary Jose M. Crisol at Camp Murphy this morning. The group thanked the President for steps he had taken to further the interests of disabled veterans since he had assumed office, like the five-year extension of the Rogers Act, which grant medical benefits to veterans.

Telesforo Tenorio, suspended chief of police of Manila, also called to thank the President for reinstating him to office following his acquittal on a theft charge filed against him in the court of first instance.

Rep. Pedro Trono of Iloilo sought and obtained the release of ₱100,000 for the construction of an annex building to the Pampanga Provincial Hospital, where he and other injured officials had been hospitalized following the car accident which resulted in the death of two congressmen. Rep. Trono informed the President that the hospital facilities in Pampanga were inadequate to meet the needs of so big a province. He said that at the time of the accident, he and the other congressmen, all members of the House committee on health, had already covered a total of 16 provinces in Luzon, in connection with their survey of the health of various localities throughout the country.

Among the last callers at noon were Senator Manuel C. Briones, House Majority Floor Leader Arturo M. Tolentino, and Reps. Floro Crisologo of Ilocos Sur, Vicente L. Peralta of Sorsogon, and Gaudencio E. Abordo of Palawan.

In the afternoon, the President conferred with PC commanding officers of all the provinces of Luzon led by Brig. Gen. Florencio Selga and Col. Benjamin Santilla, who called on the first day of their three-day convention.

The President was informed that in general there was peace and order throughout Luzon except in isolated areas where sporadic clashes against dissidents took place in connection with the peace-and-order campaign of the government. The President congratulated the PC officials

for their vigilance and urged them to continue with their good work of maintaining continued peace and order throughout the Philippines.

Selga told the President that the provincial commanders were conferring to discuss the implementation of the presidential directive which had bearing on the enforcement of motor vehicles and tarffic laws, the purchase of palay by the NARIC, the enforcement of forestry laws, customs laws, price control laws, immigration laws, anti-dynamite fishing laws, and those which deal with the purchase and collection of loose firearms.

Earlier, the President commended 11 officers of the Judge Advocate General's Office, along with three civilian employees acting as legal assistance, on the enforcement of tenancy laws for their able assistance in the speedy disposition of land tenancy cases throughout the country.

The President lauded them in individual letters for the "zeal and enthusiasm" they had shown towards rectifying the misconception that the Government was interested only in the interests of the big landholding moneyed few. He expressed his gratification over the current awarement among present-day tenants that "the Government will be no less solicitous towards them and that it will do its best to maintain a most harmonious and equitable landlord-tenant relation in the country."

In the evening, the President received the credentials of Argentine Envoy Extraordinary and Minister Plenipotentiary Carlos Alberto Pasini Costadoat at ceremonies held in the Malacañang ceremonial hall. Present at the ceremonies were ranking officials of the Department of Foreign Affairs headed by Vice-President Carlos P. Garcia, Undersecretary Raul Manglapus, and Executive Secretary Fred Ruiz Castro. Officials of the Argentine legation and commanding officers of the PC units throughout Luzon who earlier had paid a courtesy call on the Chief Executive were also present.

In presenting his credentials, the Argentine Minister conveyed the personal greetings of President Juan Peron to President Magsaysay, to the Philippine Government, and to the Filipino people. He said that he would promote further the existing cordial ties between Argentina and the Philippines.

President Magsaysay in response thanked the Argentine Minister for his cordial greetings and at the same time extended his best wishes and those of the Filipino people to President Peron. The President recalled that the Philippines and the Argentine peoples have a common heritage of Latin culture and Christian faith and have gone through the same hardships in fighting for their freedom. He also noted the interest of the Argentine Government in bringing to the masses of Argentina the greatest measure of happines and prosperity. He added that the Philippine Government is likewise dedicating its energies to the uplift of the people, especially of those in the rural areas.

After the presentation of credentials and the exchange of speeches the President and Minister Costadoat drank the ceremonial toast. The Argentine Minister and his staff were then introduced to the Philippine officials.

The President in the evening motored to Our Lady of Lourdes Hospital in Mandaluyong to visit former President Quirino, who had been resting there since last Friday. The last time they met was on President Magsaysay's inauguration on December 30, 1953.

When President Magsaysay entered the Quirino suite, Mr. Quirino said smiling, "You are looking very fine, Monching." The two carried a very cordial conversation for about 15 minutes.

The President said he had planned to visit Mr. Quirino on his recent birthday, but that he had been delayed in his trip to Laguna, where he released lands to some settlers.

The Chief Executive was ushered into the Quirino suite by Mrs. Vicky Quirino-Gonzalez.

November 23.— FIVE minutes before schedule, at 4:55 this morning, the President took off in his C-47 from the Nichols airbase and headed for Palawan. He was accompanied by Rep. Gaudencio Abordo of Palawan, Assistant Prisons Director Eriberto Misa, Jr., Lands Director Zoilo Castrillo, Palawan Board Members Juan Bautista and Proyecto Setias, Lieut. Gen. Jesus Vargas, Brig. Gen. Alfonso Arellano, Brig. Gen. Pelagio A. Cruz, and Commodore Jose M. Francisco.

The President arrived at Puerto Princesa airstrip at 7:40 a.m. He was met at the airport by Gov. Patricio Fernandez, Prisons Director Alfredo M. Bunye, Msgr. Gregorio I. Espica, apostolic prefect of Palawan, and other officials.

Upon landing at Puerto Princesa airstrip, the President motored 22 kilometers to the Iwahig penal colony. He had his breakfast at the colony and gave instructions to Bunye to harness prison manpower in the implementation of his social amelioration program.

During the breakfast conference, Judge Juan Bocar of Palawan told the President the province was comparatively peaceful. He said he had few criminal cases on his dockets.

The President instructed Bunye to tap the resources of the colony towards stepping up coffee and rice production. He also advised the director to exploit labor to yield maximum benefits. He directed, however, that 50 per cent of the profits the prison would earn, should go to the families of the prisoners.

He also told Bunye he wanted two plants for pre-fabricated schoolhouses established in the colony immediately.

The Government, the President said, would pay the same price for the schoolhouses that the inmates would manufacture as it cost the Army to produce them. He added that 50 per cent of the profit would go to the inmates' families.

The President also announced a new policy in the resettlement of the prison inmates by granting them six hectares of land each upon their release from the colony.

Informed that a road to the new Tagumpay settlement was slippery and dangerous, the President cancelled his plan to the site. However, he gave instructions to the governor and other officials to help the settlers in the area.

On his way back to the Puerto Princesa airstrip, the President stopped near the house of a friend, Samuel Stagg, the "Jungle Philosopher", who told the President he was very happy over his visit.

The President took off for Manila at 9:55 a.m., arriving at Nichols airbase at 12:10 p.m.

In the afternoon, he signed a proclamation declaring November 25, America's Thanksgiving Day, a special public holiday.

November 24.— SCRAPPING a previous plan to hold another out-of-town meeting of his Cabinet in Laur, Nueva Ecija, the President instead convoked his Cabinet in the Council of State room. Laur being in Huklandia and there being too much publicity about the proposed trip, there were reports that the President cancelled the plan for security reasons.

President Magsaysay and his Cabinet took further steps this day to boost the cassava industry by approving rules and regulations designed to carry out Executive Order No. 15 to implement Republic Act No. 657, otherwise known as the Cassava Flour Law. The Cabinet approved rules and regulations proposed by the PRISCO for the compliance of all parties concerned. It is believed that these measures will protect and promote the promising cassava industry.

Under the provisions of the Cassava Flour Law and Executive Order No. 15 implementing it, the PRISCO is directed to require for the issuance of a license to import wheat flour that the importer should buy cassava flour in such proportions, not to exceed 30 per cent of wheat flour by weight, as may be prescribed by the administrator of economic coordination, and sell cassava flour and wheat flour in the same proportions.

The President and his Cabinet during their more than two hours meeting this day approved the following:

(1) The waiver of progressive taxes in favor of four sugar centrals for the crop year 1953–1954 under Commonwealth Act No. 567; (The waiver is subject to the general condition that "the petitioning sugar centrals give their planters at least 60 per cent participation on their total production for the crop year 1953–1954 and to the specific condition indicated in each case.")

(2) The release of ₱557,800 as aid to the typhoon stricken provinces for the construction of public buildings, roads, bridges, and irrigation water works;

(3) The purchase of buildings and ground abroad to house foreign service offices and personnel of the Department of Foreign Affairs, and specifically the acquisition of the present embassy building in Djakarta, Indonesia; and

(4) Authorization for the secretary of agriculture and natural resources to purchase from the PHHC a site comprising 20 hectares in Diliman, Quezon City, facing the Quezon Memorial, to be used by the department as a compound within which to build its offices.

At the Cabinet meeting the President created a three-man committee to study and determine whether the current marine officers strike was "affecting the national interest" and whether such strike consequently should be certified to the Court of Industrial Relations for settlement.

Labor Secretary Eleuterio Adevoso was named chairman, and Justice Secretary Pedro Tuason and Defense Secretary Sotero Cabahug, members. The committee was instructed to undertake its assignment immediately and submit its report to the President as soon as possible.

The maritime strike involves the Philippine Marine Officers Guild and some local shipping firms. The labor dispute already has claimed the life of a marine officer.

The President today acquitted Vice-Mayor Manuel Villanueva of Bacolod City, of administrative charges alleging violations of the Election Law and ordered his immediate reinstatement in office. The decision was contained in Administrative Order No. 83.

Villanueva had been charged with carrying a pistol on election day on November 10, 1953, within 30 meters of two polling booths. He was further accused of violating an executive order prohibiting the carrying of firearms during the last elections, of illegal possession of firearms, and of carrying firearms without a valid permit.

In the evening, the President approved the *ad interim* promotion of Col. Alfredo M. Santos to brigadier general. The Chief Executive likewise approved the promotions of the following officers to temporary ranks as follows:

To be lieutenant colonels: Majs. Tomas Karingal, Rafael Ileto, and Romeo Hanasan.

To be captain: Ist Lt. Leonardo B. Chato.

To be Ist lieutenants: 2nd Lts. Honorato J. Galan and Delfin J. Panelo.

All these promotions had been recommended by the chief of staff of the AFP and concurred in by Defense Secretary Sotero Cabahug. The officers were being recommended for promotion, the recommendation said, in view of their exceptional achievements in the field in connection with tne killing of Mariano P. Balgos.

In the case of 1st Lt. Leonardo B. Chato, he was cited for the capture of Hadjili, one of the trusted lieutenants of Kamlon.

November 25.—THANKSGIVING Day, an occasion for rejoicing or, at least, for a peaceful contemplation, found the President fulminating over a report that Indian Minister Mirza Rashid Ali Baig had branded the Philippines "an American colony."

The President cancelled all appointments with callers and a scheduled merienda with Malacañang newsmen, and called up the Department of Foreign Affairs to order that a pending investigation against Baig be pressed.

President Magsaysay today received what appears to be fresh evidence of the unfriendly attitude of Minister Baig towards the Philippine Government and people. This evidence consists of an article in the *Hindustan Times* of Friday, November 12, 1954, under the by-line of Rawle Knox and datelined Singapore, whose opening paragraph reads as follows:

"One of the most puzzled men in Manila is India's Minister to the Philippines, Mr. M. A. Baig. 'What can I report about this place?' he asks in mock despair. 'It's an American colony and the Filipinos don't know it.'"

This clipping was transmitted to the President by the Department of Foreign Affairs, which had received it from the Philippine legation in New Delhi.

In view of this development, President Magsaysay instructed the foreign office to expedite the inquiry it has initiated into other alleged instances of Mr. Baig's unfriendly and disparaging attitude towards the Philippine Government and the Filipino people, as well as to determine the authenticity of this quotation attributed to Mr. Baig. If the findings are affirmative, the foreign office was also instructed to proceed accordingly.

A Malacañang spokesman said this unfortunate development does not and should not reflect on the relationships between the Philippine and Indian Governments and people, which have always been most cordial and friendly and which the Philippine Government hopes will become closer through the years to come. In fact, it is the Philippine Government's desire to insure that nothing impairs these relationships which has impelled it to take steps aimed at clearing up possible causes of misunderstanding between the two governments and peoples.

The President today directed the suspension of the implementation of the Cabinet decision exempting some sugar centrals from paying the progressive tax for the crop year 1953–1954 until the Cabinet has met with technical men of the Office of Economic Coordination and the Bureau of Internal Revenue to discuss and formulate plans for implementing the exemptions according to the conditions set down by the Government.

The regular Cabinet meeting the previous day approved the exemptions for some sugar centrals subject to certain conditions, of which the one made applicable to all the centrals granted the waiver was that said centrals "give their planters at least 60 per cent participation on their total production for the crop year 1953–1954."

A Malacañang spokesman said implementation of this exemption grant was ordered held in abeyance by the President until the Cabinet has discussed and approved a plan of execution to be drawn up by technical men which will insure full compliance with the conditions of the waiver.

Despite the President's bad humor this day, he took time out, however, to send a message of condolence to Rep. Tobias Fornier of Antique, on the death of his wife.

November 26.—THE Chief Executive started the day with a breakfast with Hollywood Movie Executive Eric Johnston, Leo Hochstetter, Miss Marie Smith, Irving Maas, Ernesto D. Rufino, Marcos Roces, and Alvin Cassell. For a change politics was not discussed at the breakfast table. Instead the conversation dwelt on Hollywood experiments ranging from the Panoramic to the latest Vista-Vision.

After the breakfast, the President proceeded to his executive office where he received a number of callers including Gov. Decoroso Rosales of Samar, who accompanied Mayors Ramon Litaba of Catbalogan and Pedro de la Cruz of Pambujan, who requested financial aid from the President for their lighting system and waterworks.

Wilfred James Philips, member of the board of directors of the League of the Red Cross Society in Geneva, paid a courtesy call on the President. Philips, who was leaving for Geneva after a brief stay here, was accompanied by Gov. Francisco Infantado of Mindoro Oriental and Dr. Feliciano Cruz of the Philippine National Red Cross.

Sofronio Balce of PHILCOA offered one-half of the royalties from his patents for rewards to deserving researchers in the coconut industry. The President accepted the offer and thanked Balce, who was accompanied by OEC Administrator Alfredo Montelibano.

The President released this day ₱10,000 for the construction of roads in barrio Kansinala in Apalit, Pampanga, and directed the installation of artesian wells and the improvement of roads in barrios Ligas, Bungahan, and Sumapa in Malolos, Bulacan.

The President talked to a group of people from the barrios who had evacuated to urban centers because of Huk threats but who are now beginning to go back. Upon being informed of the bad roads and the lack of water in their localities, the President acted immediately saying that due encouragement should be given to the barrio people who want to return to their barrios so that abandoned fields could be planted again to rice and other crops. He assured the people that they had little to fear now from the Huks.

The President requested the Meralco to study the possibility of extending light service to the barrios in Malolos. He directed Brig. Gen. Manuel Cabal, 1st MA commanding general, to send Army engineers to the barrios in Malolos to work on road improvements.

The President this morning inducted Brig. Gen. Alfredo M. Santos, 2nd MA commanding general, as a general in the Armed Forces of the Philippines and instructed him to bring about an end to the dissident movement and encourage the people to go back to the barrios.

The President, with Mrs. Santos and Mrs. Pilar H. Lim, pinned the stars on Brig. Gen. Santos immediately after the induction. Congratulating the new general who was responsible for the killing of top Huks Guillermo Capadocia and Mariano Balgos, the Chief Executive told Gen. Santos, "The unique thing in you is that you are never jealous of anybody." The President said before the large crowd of senators, representatives, and Army officers at the induction rites that had Gen. Santos been jealous of the aid of civilians and others during the operations against Capadocia in Iloilo, the top Huk in the Visayas would not have been trapped by the Armed Forces.

As a parting instructions to the new general, the Chief Executive advised him not to let the stars on his shoulders "change you."

Among those who attended the pinning ceremony were OEC Administrator Alfredo Montelibano, Sen. Macario Peralta, Jr., Defense Undersecretary Jose M. Crisol, AFP Chief of Staff Lieut. Gen. Jesus Vargas, several solons, top ranking officers of the Armed Forces, and relatives and friends of the new general.

Other callers of the President included Sens. Edmundo B. Cea and Macario Peralta, Jr.; Reps. Reynaldo Honrado, Samuel Reyes, Floro Crisologo, Paulino Alonzo, Carlos Hilado, Jose Aldeguer, Arturo M. Tolentino, Justino Nuyda, and Emilio Tible; Govs. Fernando Silvosa and Eliseo Quirino; and Monsgr. Egidio Vagnozzi, Gerald Wilkinson, and Jeffrey Davis.

The President launched today a determined drive to tighten up discipline in the Armed Forces by ordering two area commanders to summarily dismiss Armed Forces personnel guilty of committing abuses on civilians.

He issued the orders after observing that there was a tendency for discipline to relax in the Armed Forces. He said he wanted to nip this tendency in the bud before it deteriorated into a situation where the Armed Forces might lose the cooperation and good will of the civilian population.

"If that happens," the President said, "we will have lost all the great gains that have been made in the anti-Huk campaign, and we will find ourselves back in the same situation we were in three or four years ago."

The President telephoned Brig. Gen. Manuel Cabal, IMA commander, and directed him to dismiss a sentry guilty of discourteous and abusive conduct while on duty at a check point in Pampanga. The sentry had been denounced by two newspapermen who said he had fired in the air and had treated them and their wives abusively without provocation. The

President said the soldier's acts were uncalled for and constituted the kind of behavior that should not be tolerated in the Armed Forces.

In another order issued to Brig. Gen. Alfredo N. Santos, IMA commander, the President also directed immediate investigation of a complaint that some soldiers in Cavinti, Laguna, had indulged in a drinking orgy last week and looted some houses, causing terror among the civilian population. Saying he wanted an immediate report on this incident, the President told Santos to dismiss all soldiers found to have participated in these abuses as well as their immediate officer for grave dereliction of duty and incompetence.

November 27.— HIS passion for punctuality caused the President to arrive too early for a luncheon engagement to honor nine outstanding Filipino scientists at the Aristocrat Beach Resort this noon. He arrived at the resort at 11:45 a.m., 15 minutes before the scheduled time, to find himself alone with his aides. He lost no time deciding to eat elsewhere and then returned to Malacañang.

The President left Executive Secretary Fred Ruiz Castro to represent him and present the awards to the scientists in connection with the celebration of National Science Week.

In the afternoon, the President authorized the GSIS to extend two-months' salary loans to government employees in the typhoon-stricken areas. This measure was taken to enable the affected employees to reconstruct their destroyed properties and rehabilitate themselves. This was in addition to the financial help already extended by the Government to the devastated areas amounting to more than half a million pesos for the construction of public buildings, roads and bridges, and irrigation water works; and aid in the form of food, clothing, medicine, and relief goods extended by other government agencies.

The President also directed the GSIS to release the dividends to members of the system before Christmas. According to Rodolfo P. Andal, member of the board of trustees of the GSIS, some P2 million will be distributed.

The Chief Executive left Malacañang about 5 p.m. for the residence of Rep. Tobias Fornier to condole with the solon personally and visit the body of the late Mrs. Fornier, which lay in state at the Fornier residence at 33 San Perfecto, San Juan, Rizal.

Before descending the Palace stairs, the President came by a group of UST girl students who were touring the Palace during the regular open-house in Malacañang. He greeted them one by one, shaking their hands.

Then he joined Mrs. Magsaysay in receiving a delegation of the Balanga 4-H Club headed by Dr. Segundina Reyes, Mrs. Gertrudes Reyes, and Mrs. Monica Millorca. The President talked with the delegation for a few minutes.

November 28.— AFTER hearing an early mass at the Malacañang chapel with Mrs. Magsaysay and their children, the President had breakfast with his family, a privilege his family rarely enjoy because of the President's frequent breakfast conferences with top brass of the government, party leaders, and eminent visitors.

Then the President conferred with members of the presidential committee which re-studied plans for the rehabilitation of Intramuros. The committee chairmanned by Anselmo T. Alquinto, director of planning, submitted its six-point recommendation in a record time of six days.

The President approved the committee proposal to amend Republic Act No. 597, requiring that buildings to be built in Intramuros should conform strictly to the Spanish type of architecture, in order to speed up the rehabilitation of historic Walled City. He approved the following six-point recommendation of the committee:

1. Republic Act No. 597 should be amended to allow free use of any type of architecture in all new building constructions and reconstruction of heavily damaged buildings, with the exception of: (*a*) the Manila Ca-

thedral; (*b*) Fort Santiago; (*c*) the former Governor's Palace; (*d*) the Ayuntamiento; (*e*) historic churches that may be rehabilitated; and (*f*) all walls and bastions, all of which should be reconstructed in their original type of architecture.

2. Intramuros should be zoned for selective business uses with residential buildings allowed. With but a few exceptions the height should be limited to 13.5 meters and three stories high.

3. All the streets should be rehabilitated immediately and utilities (water, sewer, and light) repaired or installed to accelerate development.

4. Intramuros should be completely cleared of squatters who may be transferred to the almost completed land-utility Bago-Bantay Housing Project south of Highway 54. Proper representations should be made to PHILCUSA-FOA for allocating a part of Bago-Bantay to the Intramuros squatters.

5. The National Government should set aside, as soon as possible, an initial sum of P50,000 for general clearing of the area and for planting shade trees, ornamental shrubs, and vines.

6. Limited projects should be started immediately by the government or through the assistance of civic organizations. Fort Santiago, the Parian Gate. and the former aquarium site should be given priorities.

The committee reported to the President that the ambiguous provision of Republic Act No. 597 that all buildings in Intramuros should conform strictly to the Spanish type of architecture of the proper period had a retarding effect on reconstruction owing to difficulties encountered in implementation. It said that the walls, bastions, and other historic edifices were mostly all that remained of a historic past.

The report added that the pre-war uses of Intramuros, its existing pattern, the narrowness of the streets, the relation of the district with the central downtown area of Manila and the commercial sub-centers in nearby districts, the lack of parking areas—all these had to be taken into account in fixing policies in Intramuros.

According to the committee, Republic Act No. 597, declaring Fort Santiago a national shrine and providing for the preservation of historical monuments in the Walled City should be amended so as to eliminate the provision that buildings to be constructed within Intramuros should conform strictly to the Spanish type of architecture of the proper period. The committee wants to give freedom in the use of any type of architecture in the construction of new buildings or reconstruction of heavily damaged buildings with a few exceptions as mentioned in the first recommendation.

It was pointed out that the National Planning Commission could not be wholly blamed for the limitations imposed on it by Republic Act No. 597. The plans had been properly prepared but the defects had been in the implementation.

The committee said that much of the delay in the reconstruction of Intramuros, to a great extent, could be attributed to: (1) lack of facilities like water and sewer line, (2) roads that have not been repaired, and (3) squatters who have moved in, uncontrolled.

The President commended this day justice officials for taking action against a district judge suspected of falsifying judicial records in order to escape the salary ban on judges with lagging court dockets. In telephone conversations with Solicitor General Ambrosio Padilla and Solicitor Antonio Torres, the President said the administrative proceedings filed by the Solicitor General's Office with the Supreme Court against this judge represented implementation of one of his good government pledges—to strengthen the judiciary and bring about speedier disposition of cases.

The judge has been accused of serious misconduct and inefficiency in office for having allegedly falsely certified last year and early this year that there were no cases pending in his court beyond 90 days after they had been submitted to him for decision. This certification allegedly was not in accordance with the facts. The judge, the complaint said, made the false certification in order to be able to collect his salary. Under the law, a judge cannot collect his salary if he has cases pending before him more than 90 days after they had been submitted for decision.

The President was told that this case was the first of its kind in the country's judicial history. He was informed by Solicitor General Padilla that the administrative case was filed against the judge on orders of Secretary of Justice Pedro Tuason. The President subsequently tried to communicate with the justice head to commend him but could not reach him.

The President recalled to Padilla that Justice Tuason, when he made a study of the Philippine judicial system immediately after the last elections on request of then President-elect Magsaysay, had suggested as a step towards minimizing delay in the disposition of cases that the salary ban be enforced more strictly against lagging judges. "I am glad," the Chief Executive said, "that Secretary Tuason is carrying out this line of action vigorously."

Told that several more judges were under investigation for the same offense, the President agreed there should be no let-up in the Department of Justice's determined campaign to clean up the judiciary and restore it to its old prestige.

The President ordered this day OEC Administrator Alfredo Montelibano to change the name of the NARRA settlement in Kabankalan, Negros Occidental, from *Luzville* to any other name.

The Chief Executive was displeased with the naming of the NARRA settlement after the First Lady. He said the settlement had been thus named without his knowledge and consent. A Malacañang spokesman said it was the policy of the President not to perpetuate his name or that of his family by having public places or buildings named after them. Pursuant to this policy, the Chief Executive ordered the immediate changing of the name *Luzville*.

The President at the same time created a presidential committee to investigate a charge of one Carlos Tortal which appeared in the local press that the rights of the settlers in *Luzville* was "flagrantly violated by the NARRA."

The presidential committee to investigate charges against the NARRA settlement is composed of Col. Luis Mirasol, EDCOR chief, as chairman; and PCAC Chairman Manuel P. Manahan and Cesario Clemente of the NARRA, as members. The President wanted the charges investigated immediately.

In the afternoon, the President, acompanied by his aide, Maj. Emilio Borromeo, motored to the NARIC compound on Azcarraga. The President said that he wanted to check if the NARIC was attending to the indigent who needed rice very badly.

November 29.—IGNORING the approach of typhoon *Tilda*, the President enplaned for Iligan City in Lanao, to inaugurate the newly constructed Maria Cristina airport in the municipal district of Momungan. He woke up at 4 o'clock in the morning and reached the airport before 5 o'clock, the scheduled take-off. However, some members of the presidential party did not come on time and delayed the flight by 20 minutes.

With the presidential party were Sens. Emmanuel Pelaez and Tomas Cabili, Reps. Domocao Alonto of Lanao and Luminog Mangelen of Cotabato, Public Works Secretary Vicente Orosa, Commerce Secretary Oscar Ledesma, OEC Adiministrator Alfredo Montelibano, Public Works Undersecretary Juan G. Paraiso, Defense Undersecretary Jose M. Crisol, Lieut. Gen. Jesus Vargas, and Brig. Gen. Eulogio Balao.

Newspapermen with the party included Antonio Albano of the *Herald*, Luciano Millan of the *Bulletin*, Celestino Vega of the *Bagong Buhay*, Pablo Bautista of the *Liwayway*, and Isagani Yambot of the *Times*.

The Presidential party flew in two planes, the *Pagasa* and the *Laong Laan*. The party landed at the Maria Cristina airport in Iligan City at 8:19 a.m. The President and his party were met royally in the picturesque Moslem way, and were given a 21-explosion salute with rockets launched into the air.

Upon arrival at the airport, the President delivered his first speech on the plans of the government to build many airports to improve the system of aviation in the country. He said the project would bring Mindanao closer to the seat of the national government.

Mrs. Salvador Lluch, wife of the Lanao governor, assisted by Mrs. Benito Labao, wife of the mayor of Iligan City, cut the ceremonial ribbon marking the formal opening of the ₱360,000 Maria Cristina airstrip.

From the airport, the President proceeded to Dansalan City, some 30 kilometers away. He delivered a five-minute speech at Camp Keithley and another at the public plaza.

Invited to the house of Datu Naga, mayor of Dansalan City, the President was offered a gold-plated cane valued at ₱3,000. The President at first declined to receive the gift, saying it was very expensive, but he finally accepted it upon being informed that Moslems would consider his refusal to accept the gift as an affront to their tradition.

After coming from the house of the Dansalan City mayor, the President lunched at a restaurant, for he failed to take along his own food.

The presidential party took off from the Maria Cristina airport at 2:15 p.m. for its return trip to Manila. Upon reaching northern Visayas, the presidential plane *Pagasa* encountered rough weather owing to the approach of typhoon *Tilda*. The *Pagasa* was able to detour out of the typhoon area only after the rough sailing had shaken the morale of most of the members of the presidential party. The President arrived in Manila at 5:15 p.m.

The President today, on the eve of Andres Bonifacio Day, approved the release of ₱100,000 to defray the expenses for the transfer of the remains of some 3,000 deceased soldiers from different parts of the country to the *Libingan ng mga Bayani,* formerly the Republic Memorial Cemetery at Fort Wm. McKinley, and for the improvement of the cemetery. Out of this amount, the President approved the initial release of ₱25,000 for the transfer of the remains of soldiers who had been interred in Bataan.

Under the present plans, the remains of soldiers still interred in various parts of the country would be brought ever to their final resting place at the *Libingan ng mga Bayani.* The soldiers' cemetery would be fenced. Marble crosses would be erected to mark the graves and a shed for visitors would be constructed. It is also planned to have a new tomb for the Unknown Soldier constructed within the cemetery.

November 30.—THE PRESIDENT this morning motored to Lucena with a three-fold purpose: to unvail the monument of the late President Manuel L. Quezon, to confer with provincial and municipal officials of Quezon on problems affecting their province, and to inaugurate the Dumaca irrigation system. However, in view of the inclement weather, the President had to forego his first and second objectives but went through with the inauguration of the Dumaca irrigation system.

Accompanied by Lieut. General Jesus Vargas and newsmen, the President left Malacañang at 7:20 a.m. He was met at the boundary line between Quezon and Laguna by a big delegation of Quezon officials and townspeople headed by Gov. Vicente Constantino. The President alighted from his car and acknowledged the greetings of the people. Gov. Constantino then rode with the President to Lucena. Brig. Gen. Alfredo M. Santos, 2nd MA commanding general, caught up with the President on the way and also rode with the President to Lucena.

Arriving at Lucena at 10 a.m., the President proceeded directly to the Lucena parish church, where he was met by Bishop Alfredo Obviar, administrative diocesan of Lucena; Mons. Diego Conti, vicar of Lucena; Dr. Jose Ocampo, acting president of Catholic Action; and other officials. Fr. Gregorio Rañola sang the *Te Deum* in honor of the President.

The President then went to the governor's mansion, where Board Members Vicente Correa and Ramon Talag, Provincial Treasurer Andres Llames, District Engineer Ciceron Guerrero, Auditor Luis Lagdameo, Superintendent of Schools Isabelo Manalo, Mayor Honorio Abadilla, Gov. Dominador Chipeco

of Laguna, Gov. Patricio Fernandez of Palawan, and other officials greeted the President.

After eating breakfast, the President made for the provincial plaza where he was to unveil the Quezon monument. Before the unveiling ceremonies coult start, it rained so hard that the ceremonies had to be postponed until some other time.

Already wet by the rain, the President motored to Mayao, five kilometers away from the town, in spite of the strong wind and rain, to inaugurate the irrigation system. He got off the car and turned on one of the control valves of the Mayao gate.

He inaugurated the system under a strong wind and driving rain which drenched him. He was assisted in the ceremony by Gov. Constanitno of Quezon, Lieut. Gen. Jesus Vargas, Brig. Gen. Alfredo M. Santos, and District Engineer Guerrero.

The Chief Executive said he was glad the ₱1 million Dumaca irrigation system had been completed because it would provide water to several thousand hcetares of rice land in Quezon all the year round, including the dry season. He added he was looking forward to an increased rice production in Quezon not only for the self-sufficiency of the province but also for the possibility of supplying rice to the deficit rice-producing provinces nearby.

Upon the advice of Engineer Guerrero, who said that the main irrigation gate in Mainit was inaccessible owing to narrow and dangerous road, the President did not continue with the proposed inspection of the main gate. From the irrigation project, he left for Manila at past 11 a.m. The conference with Quezon officials also had to be postponed.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 78

FURTHER AMENDING EXECUTIVE ORDER NO. 24 DATED NOVEMBER 12, 1946, ENTITLED "CREATING THE NATIONAL ADVISORY HEALTH COUNCIL"

The second paragraph of Executive Order No. 24 dated November 12, 1946, as amended by Executive Order No. 86 dated September 3, 1947, Executive Order No. 424 dated March 10, 1951, Executive Order No. 429 dated April 7, 1951, and Executive Order No. 454 dated June 22, 1951, is hereby further amended to read as follows:

"NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a body to be known as the National Advisory Health Council to study problems of public health and sanitation and to make such recommendations as it may deem necessary for the improvement of public health and sanitation and the promotion of medical research. The Council shall be composed of the following:

"The Secretary of Health	Chairman
The Undersecretary of Health	Vice-Chairman
The Director of Health	Member
The Social Welfare Administrator	Member
The Secretary of Education	Member
The Secretary of National Defense	Member
The Dean, College of Medicine, U. P.	Member
The Dean, College of Medicine, U. S. T.	Member
The Dean, College of Medicine, M. C. U.	Member
The Chairman, Board of Medical Examiners	Member
The Chairman, Board of Dental Examiners	Member
The President, Philippine Medical Association	Member
The President, Philippine Public Health Association	Member
The President, Philippine Federation of Private Medical Practitioners	Member
The President, Philippine Pharmaceutical Association	Member
The President, League of District and City Health Officers	Member
The President, Filipino Nurses Association	Member
The President, Philippine Medical Women's Association	Member

The President, Colegio Medico-Farmaceutico de Filipinas	Member
The Chairman, Board of Pharmaceutical Examiners	Member
The President, Philippine Mental Health Association	Member

"The members of the Council shall serve without compensation and their term shall be co-terminous with their tenure in their regular positions."

Done in the City of Manila, this 25th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 79

CREATING A NATIONAL FORESTRY COUNCIL

WHEREAS, there is an urgent need for the proper conservation and management of the forest resources of the country and for the reforestation of critical areas of barren watersheds; and

WHEREAS, to solve effectively the problem of forest conservation and reforestation, there is need of an advisory body on the matter;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a National Forestry Council whose chief function is to advise the Department of Agriculture and Natural Resources in bringing about the orderly utilization and proper conservation of our forest resources, including the reforestation of strategic barren areas. The Council shall be composed of the following:

The Secretary of Agriculture and Nautral Resources	Chairman
A civic leader to be appointed by the President	Executive Chairman
The Director of Forestry	Member
The Chief of Constabulary	Member
The Chief of the Philippine Air Force	Member
The Undersecretary of Justice	Member
The Manager, National Power Corporation	Member
The Director of Soil Conservation	Member

The Director of Animal Industry ..... Member
A representative of the Philippine Lumber Producers' Association ..... Member
A representative of the Society of Filipino Foresters ..... Member

The Executive Chairman and the representatives of the Philippine Lumber Producers' Association and the Society of Filipino Foresters shall serve for a period of two years. All shall serve without compensation.

The Council shall have the following specific functions:

1. To advise the Department of Agriculture and Natural Resources on the implementation of the forest conservation and reforestation program;
2. To present to the Department the problems affecting forestry and to make suggestion for their solution; and
3. To advise the Department on the formulation of practical ways and means of financing the program.

In the performance of its functions, the Council is hereby authorized to call upon any department, bureau, office, agency or instrumentality of the Government for such information, professional consultation and assistance as it may need.

The Secretary of Agriculture and Natural Resources is authorized to organize a Provincial Forestry Council in each province where it is needed, the members of which shall be the following:

The District Forester
The Provincial Commander, Philippine Constabulary
The Provincial Fiscal
The Division Superintendent of Schools
A representative of a civic organization to be appointed by the Secretary of Agriculture and Natural Resources
A representative of the Provincial Governor
A forestry licensee to be appointed by the Secretary of Agriculture and Natural Resources

The Chairman shall be chosen by the Secretary of Agriculture and Natural Resources from among the members of the Council.

The Provincial Forestry Council shall have the following functions:

(1) To implement and coordinate the action program of forest conservation and reforestation in the province; and
(2) To advise the Secretary of Agriculture and Natural Resources on the problems affecting forest conservation and reforestation and to make suggestion for their solution.

Done in the City of Manila, this 2nd day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 80

FURTHER AMENDING EXECUTIVE ORDER NO. 22, DATED APRIL 5, 1954, AS AMENDED BY EXECUTIVE ORDER NO. 66, DATED SEPTEMBER 23, 1954

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby amend Executive Order No. 66, dated September 23, 1954, so as to allow fishing by means of trawls, as defined in Executive Order No. 22, dated April 5, 1954, within that portion of San Miguel Bay north of a straight line drawn from Tacubtacuban Hill in the municipality of Mercedes, province of Camarines Norte, to Balocbaloc point, in the municipality of Tinambac, province of Camarines Sur, until December 31, 1954, only. Thereafter, the provisions of said Executive Order No. 22 absolutely prohibiting fishing by means of trawls in all the waters comprised within the San Miguel Bay shall be revived and given full force and effect as originally provided therein.

Done in the City of Manila, this 2nd day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 81

FURTHER AMENDING EXECUTIVE ORDER NO. 475 DATED OCTOBER 5, 1951, AS AMENDED BY EXECUTIVE ORDER NO. 51 DATED AUGUST 10, 1954

By virtue of the powers vested in me by section 4 of Republic Act No. 1168, entitled "An Act to provide for

the fixing under certain conditions, of the maximum selling prices of commodities in short supply, creating the price control office, and for other purposes," and upon the recommendation of the General Manager and the Board of Directors of the Price Stabilization Corporation, I, Ramon Magsaysay, President of the Philippines, do hereby order:

SECTION 1. Section 1 of Executive Order No. 475 dated October 5, 1951, as amended by Executive Order No. 51 dated August 10, 1954, is hereby further amended by reducing and setting up new ceiling prices of the following:

FOODSTUFF

Commodity	Unit	Wholesale per ganta	Retail per ganta
RICE:			
Macan, 2nd Class		₱0.80	₱0.85
Macan, 1st Class		0.85	0.90
Elon-Elon or Raminad		0.95	1.00
Wag-Wag		1.05	1.10

SEC. 2. This Order shall take effect on January 1, 1955.

Done in the City of Manila, this 20th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

[*NOTE: Due to the error committed in the heading of Executive Order No. 631 in October 1953 issue of the Official Gazette in which the municipality of TABONTABON was misprinted VICTORIA, the same is re-published here so as to correct the said error.*]

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 631

CREATING THE MUNICIPALITY OF TABONTABON IN THE PROVINCE OF LEYTE

Pursuant to the provisions of section sixty-eight of the Revised Administrative Code, there is hereby created in the Province of Leyte a municipality to be known as the municipality of Tabontabon to consist of the following barrios of the municipality of Dagami, same province:

1. Tabontabon
2. Moring
3. Bilisong
4. Jabong
5. Mercadohay
6. Cambocao
7. Aslom
8. Baliñgasag
9. Mohon
10. Mooc
11. Amandañgay

with the seat of government at the barrio of Tabontabon.

The municipality of Dagami shall have its present territory minus the barrios enumerated above which are included in the municipality of Tabontabon.

The municipality of Tabontabon shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof and upon the certification by the Secretary of Finance or the Provincial Treasurer of Leyte that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and essential services of a regular municipality and that the mother municipality of Dagami after the segregation therefrom of the barrios comprised in the municipality of Tabontabon can still maintain creditably its municipal government and provide for all its statutory obligations and essential municipal services.

Done in the City of Manila, this 17th day of October, in the year of Our Lord, nineteen hundred and fifty-three, and of the Independence of the Philippines, the eighth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 84

DECLARING DECEMBER 5, 1954, AS PEACE THROUGH PRAYER DAY

WHEREAS, peace is the common concern and obsession of all mankind; and

WHEREAS, there can be no durable peace, peace with justice and dignity, unless it is built on some spiritual foundation in the hearts and souls of men;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, do hereby declare December 5, 1954, as Peace Through Prayer Day. I call upon all the people and residents of the Philippines, regardless of race or creed, to take active part in the observance of this Day to the end that we may enjoy the blessings of true and lasting peace.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 27th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 85

DECLARING MONDAY, NOVEMBER 1, 1954, A SPECIAL PUBLIC HOLIDAY

WHEREAS, paying homage to the dead on All Saints' Day is one of the cherished traditions of the Filipino people; and

WHEREAS, in keeping with that tradition, the people should be given full opportunity to observe the day with all its religious fervor;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby declare Monday, November 1, 1954, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 27th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 86

CHANGING THE "REPUBLIC MEMORIAL CEMETERY" AT FORT WM MCKINLEY, RIZAL PROVINCE, TO "LIBINGAN NG MGA BAYANI"

WHEREAS, the name "Republic Memorial Cemetery" at Fort Wm McKinley, Rizal province, is not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare that the "Republic Memorial Cemetery" shall henceforth be called "LIBINGAN NG MGA BAYANI".

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 27th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 87

RESERVING FOR PLAYGROUND SITE PURPOSES A CERTAIN PARCEL OF THE PRIVATE DOMAIN OF THE GOVERNMENT SITUATED IN THE CITY OF PASAY

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provision of section 64(*e*) of the Revised Administrative Code, I, Ramon Magsaysay, President of the Philippines, do hereby withdraw from sale or settlement and reserve for playground site purposes, under the administration of the City of Pasay, subject to private rights, if any there be, a certain parcel of the private domain of the Government, situated in the City of Pasay and more particularly described, to wit:

"Lot No. 2 (Republic of the Philippines)

A parcel of land (lot No. 2 of the resurvey and sub-division plan being a portion of the land desecribed in Transfer Certificate of Title No. 6562, G.L.R.O. Record No.——), situated in Pasay City. Bounded on the NE., by F. B. Harrison Street ;on the SE., by lot No. 1 of the resurvey and subdivision plan; on the SW., by Park and Planting strip; and on the NW., by lots Nos. 405, 404 and 403 of Pasay cadastre. Beginning at a point marked 1 on plan, being S. 13° 41′ W., 44.61 meters from B.B.M. No. 3, Pasay Cadastre 259; thence S. 13° 13′ 27″ E., 77.67 meters to point No. 2; thence S. 74° 16′ 23″ W., 259.00 meters to point No. 3; thence N. 11° 29′ 15″ W., 77.76 meters to point No. 4; thence N. 74° 15′ 48″ E., 256.63 meters to the point of beginning; containing an area of 20,000 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: Points Nos. 1 and 4 by concrete monuments; and points Nos. 2 and 3 by concrete monuments marked U. S.; bearings true; declination 0° 15′ E.; date of original survey, June, 1909 and that of the resurvey and subdivision survey, May 5–7, 1952."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 27th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 88

DESIGNATING THE PERIOD FROM NOVEMBER 5 TO DECEMBER 18, 1954, FOR THE NATIONAL FUND CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION

WHEREAS, the Liberty Wells Association has been doing a splendid job in providing the rural areas with artesian wells, thereby contributing to the health and happiness of the people living in those places; and

WHEREAS, the Association is in need of funds to carry out as speedily as possible its noble and worthy mission of strengthening and broadening the foundation of the Republic;

NOW, THEREFORE, I, Ramon Magsaysay, President of Philippines, do hereby designate the period from November 5 to December 18, 1954, for the national fund campaign of the Liberty Wells Association. I call upon all residents, firms and organizations all over the country to support this campaign. I authorize all government officials and school authorities and teachers to accept, for the Liberty Wells Association, fund-raising responsibilities and to give it active support and leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 1st day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 89

RESERVING FOR BUILDING SITE PURPOSES OF THE BICOL SCHOOL OF FISHERIES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE POBLACION, MUNICIPALITY OF TABACO, PROVINCE OF ALBAY, ISLAND OF LUZON

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for building site purposes of the Bicol School of Fisheries, under the administration of the Director of Fisheries, subject to private rights, if any there be, certain parcels of the public domain situated in the Poblacion, municipality of Tabaco, province of Albay, lsland of Luzon, and more particularly described in the Bureau of Lands plan Ir–1037, to wit:

"Lot 1, Ir–1037 (Republic of the Philippines)
Bicol School of Fisheries (School Site)

A parcel of land (lot No. 1 of plan Ir–1037), situated in the Poblacion, municipality of Tabaco, province of Albay. Bounded on the NE., by proposed road; on the SE., by creek; on the SW., by road; and on the NW., by Bonifacio Street. Beginning at a point marked 1 on plan, being N. 73° 07′ E. 582.90 meters from B.L.L.M. No. 2, Tabaco Cadastre 221; thence N. 80° 57′ E., 29.95 meters to point 2; thence S. 8° 49′ E., 51.04 meters to point 3; thence S. 70° 52′ W., 30.60 meters to point 4; thence N. 8° 40′ W., 56.40 meters to the point of beginning; containing an area of 1,613 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by B. L. cylindrical concrete monuments; bearings true; declination 0° 06′ E.; date of survey, September 14 and November 20, 1953 and that of the approval, April 2, 1954.

NOTE—This lot is equal to lot 7686, an additional lot of Tabaco Cadastre 221 (formerly Tabaco Beach).

"Lot 2, Ir–1037, (Republic of the Philippines)
Bicol School of Fisheries (School Site)

A parcel of land (lot No. 2 of plan Ir–1037), situated in the Poblacion, municipality of Tabaco, province of Albay. Bounded on the NE., by proposed road; on the SE., by Rizal Street; on the SW., by road; and on the NW., by creek. Beginning at a point marked 1 on plan, being N. 80° 03′ E. 607.22 meters from B.L.L.M. No. 2, Tabaco Cadastre 221; thence S. 80° 40′ W., 30.14 meters to point 2; thence N. 8° 41′ W., 9.60 meters to point 3; thence N. 70° 30′ E., 30.65 meters to point 4; thence S.

8° 49′ E., 15.01 meters to the point of beginning; containing an area of 371 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by B. L. cylindrical concrete monuments; bearings true; declination 0° 06′ E.; date of survey, September 14 and November 20, 1953 and that of the approval, April 2, 1954.

NOTE—This lot is equal to lot 7687, an additional lot of Tabaco Cadastre 221 (formerly Tabaco Beach)."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 1st day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 90

RESERVING FOR SETTLEMENT PURPOSES UNDER THE ADMINISTRATION AND DISPOSITION OF THE NATIONAL RESETTLEMENT AND REHABILITATION ADMINISTRATION (NARRA) A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITIES OF TINAMBAC AND SIRUMA, PROVINCE OF CAMARINES SUR, ISLAND OF LUZON

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I hereby reserve for settlement and development purposes, under the administration and control of the National Resettlement and Rehabilitation Administration (NARRA), subject to private rights, if any there be, and to future classification and survey, and to the condition that the timber and other forest products therein, as well as the use and occupancy of the area indicated as timber land or forest reserve, shall remain under the administration and control of the Bureau of Forestry in accordance with the Forest Law and Regulations, a parcel of the public domain,

situated in the municipalites of Tinambac and Siruma, province of Camarines Sur, island of Luzon, and more particularly described as follows:

Beginning at a point marked 1 in attached sketch plan, which is at Mile 15 of the Woodsworks, Inc., Railroad line, thence corner 2, which is equivalent to Mile 12, which crosses the line formed by corners 62 and 63 of block I, project I-G, Camarines Sur; thence corner 3, which is equivalent to corner 63 of block I, project 1-G, Camarines Sur; thence corner 4, which is equivalent to corner 8 of block I, project 1-G, Camarines Sur; thence corner 5, N. 4-30 W, 3,520 meters, stake on ground; thence corner 6, 18-00 E, 2,280 meters, which is equivalent to corner 43 of block IV, project 10, Camarines Sur; thence corner 7, which is equivalent to corner 37 of block IV, project 10, Camarines Sur; thence corner 8, following the coast line down the mouth of Tambang River; thence corner 9, following the Tambang River upsteam until it is interested by Karamboan River; thence corner 1, following the course of Karamboan River, to Mile 15 of Railroad line, the point of beginning; containing an area of approximately 8,500 hectares.

(NOTE—Subject to change to conform with final survey.)

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 1st day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 91

DECLARING TUESDAY, NOVEMBER 9, 1954, AS A SPECIAL PUBLIC HOLIDAY IN THE PROVINCES OF LANAO, COTABATO, SULU, AND ZAMBOANGA DEL SUR, AND IN THE CITIES OF DANSALAN, ILIGAN, ZAMBOANGA AND BASILAN

In commemoration of the birthday of Mohammed, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby declare Tuesday, November 9, 1954, as a special public holiday in the provinces of

Lanao, Cotabato, Sulu and Zamboanga del Sur, and in the cities of Dansalan, Iligan, Zamboanga, and Basilan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 8th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 92

DECLARING WEDNESDAY, NOVEMBER 24, 1954, A SPECIAL PUBLIC HOLIDAY IN DUMAGUETE CITY

WHEREAS, the anniversary of the organization of the City of Dumaguete falls on November 24, 1954; and

WHEREAS, the people of the said city desire to be afforded full opportunity to celebrate the event with appropriate ceremonies;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby proclaim Wednesday, November 24, 1954, as a special public holiday in the City of Dumaguete.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 93

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 19, SERIES OF 1923, WHICH ESTABLISHED THE RESERVATION OF THE SITE OF THE LANAO HIGH SCHOOL SITUATED IN THE CITY OF DANSALAN, A CERTAIN PORTION OF THE LAND EMBRACED THEREIN AND DECLARING THE SAME OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby exclude from the operation of Proclamation No. 19, series of 1923, which established the reservation of the site of the Lanao High School situated in the City of Dansalan, a certain portion of the land embraced therein and declare the same open to disposition under the provisions of the Public Land Act, which portion of land is more particularly described, to wit:

"Lot 36, Q–124 (Hadji Serad Bauduli Datu, Hadji Musa Abdulan Bauduli Datu, Hadji Mangoao Bauduli Datu, Hadji Unti Gaorac Bauduli Datu and Hadji Mohammend Malawani Bauduli Datu).

"A parcel of land (lot 36 of Dansalan Townsite Q–124), situated in the municipality of Dansalan, province of Lanao. Bounded on the NE., by Lot 56 of Dansalan Townsite Q–124; on the SE., by lot 37 of Dansalan Townsite Q–124; on the SW., by provincial road; and on the NW., by lot 35 of Dansalan Townsite Q–124. Beginning at a point marked 1 on plan, being S. 33° 39′ W., 509.82 meters from B.L.L.M. 1, municipality of Dansalan, Lanao, thence S. 26° 06′ E., 113.80 square meters to point 2; thence S. 58° 21′ W., 90.32 meters to point 3; thence N. 36° 55′ W., 132.18 meters to point 4; thence N. 67° 32′ E., 114.92 meters to the point of beginning; containing an area of 12,470 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old corners; bearings true; declination 2° 10′ E., date of survey, during 1914."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 20th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 94

REVOKING PROCLAMATION NO. 19, DATED MARCH 8, 1923, AND RESERVING THE PARCEL OR PARCELS OF LAND EMBRACED THEREIN FOR CITY HALL, PUERICULTURE CENTER, CITY HOSPITAL AND PLAZA SITES PURPOSES, SITUATED IN THE CITY OF DANSALAN

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provision of section 83 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 19, dated March 8, 1923, and reserve the parcel or parcels of land embraced therein, except lot 36, Q–124, which is declared open to disposition under Proclamation No. 93 issued on November 20, 1954, for city hall, puericulture center, city hospital and plaza sites purposes, subject to private rights, if any there be, situated in the City of Dansalan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 20th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 95

DECLARING SATURDAY, NOVEMBER 27, 1954, AS A SPECIAL PUBLIC HOLIDAY IN THE PROVINCE AND CITY OF CEBU

On the occasion of the Marian Congress in the Province and city of Cebu, I, Ramon Magsaysay, President of the Philippines, pursuant to the authority vested in me by section 30 of the Revised Administrative Code, do hereby declare Saturday, November 27, 1954, as a special public holiday in those places.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 96

DECLARING THURSDAY, NOVEMBER 25, 1954, AS A SPECIAL PUBLIC HOLIDAY FOR NATIONAL THANKSGIVING

WHEREAS, it is fitting that a day be set aside on which to dedicate our noblest thoughts in prayer and thanksgiving to Almighty God for the blessings He has bestowed upon us;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, do hereby declare Thursday, November 25,

1954, as a special public holiday for national thanksgiving. I call upon all the people to turn their thoughts and actions on that day towards Almighty God and offer Him a prayer of thanks for all the blessings He has showered upon us.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 70

CONSIDERING AS RESIGNED REGISTER OF DEEDS HIPOLITO BUENDIA OF BULACAN

This is an administrative case against Register of Deeds Hipolito Buendia of Bulacan for allegedly accepting for registration deeds of conveyance of real property without requiring the presentation of evidence of payment of realty taxes thereon and the submission of sufficient copies of said instruments as required under existing laws.

It appears that on August 18, 1950, respondent Register of Deeds cancelled Transfer Certificate of Title No. T–2599 in the name of Concepcion R. Lim de Planas, covering properties situated in Norzagaray, Bulacan, and issued in lieu thereof Transfer Certificate of Title No. T–5907 in favor of Bienvenido Angeles and others, without first requiring the submission of evidence showing that the properties involved were not delinquent in the payment of real estate taxes as required by Republic Act No. 456; and that on March 6, 1954, the respondent cancelled Transfer Certificate of Title No. T–5907 and issued in its stead Transfer Certificate of Title No. T–12215 in favor of Carmen Planas and others upon the presentation of official receipt No. H–782587 as evidence of supposed payment

of realty taxes on the properties in question. However, it turned out that said official receipt was for payment of taxes due on other properties of Carmen Planas located in San Jose del Monte, Bulacan.

In his defense respondent states he was not aware of the provisions of Republic Act No. 456 which was approved only on June 8, 1950, and that he did not examine the official receipt and simply relied on the assurance of Atty. Teofilo Mendoza, Jr., who was interested in the issuance of Transfer Certificate of Title No. T–12215 in lieu of Transfer Certificate of Title No. T–5907, just as he relied on the similar assurance of the parties concerned that they had already delivered the prescribed copies of the deeds to the provincial assessor.

Respondent's explanation is not satisfactory. He is presumed to know the law and hence may not claim ignorance of the provisions thereof. At any rate, he cannot escape responsibility for gross negligence in not taking the routine trouble of reading official receipt No. U–782587 which on its face clearly showed that it referred to other properties. He was likewise grossly negligent in accepting deeds of conveyance for registration without requiring the parties concerned to furnish extra copies which, pursuant to the Assessment Law (Commonwealth Act No. 470), he was under obligation to transmit to the provincial assessor, and relying merely on the assurance of the parties that they had already delivered the prescribed copies to the latter official.

In view of the foregoing, and it appearing that the respondent is not a member of the Bar, whereas Bulacan is a big and important province, I am constrained to relieve him from his post in the interest of the public service in order to give way to a more qualified person.

Wherefore, Mr. Hipolito Buendia is hereby considered resigned as Register of Deeds of Bulacan, without prejudice to reinstatement in some other capacity if qualified and to receiving whatever rights and benefits he may be entitled to under existing laws.

Done in the City of Manila, this 1st day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 71

REMOVING DAMIANO B. VILLALBA AS CHIEF OF THE FIRE DEPARTMENT OF BUTUAN CITY, FOR PARTISAN POLITICAL ACTIVITY

This is an administrative case against Damiano B. Villalba, Chief of the Fire Department of Butuan City, for alleged partisan political activity on five counts, namely, (1) attempting to persuade one Faustino Indoy, his "compadre" to join the Liberal Party; (2) posting Liberal Party election propaganda; (3) uttering sarcastic remarks derogatory and offensive to the NP congressional candidate but in favor of the LP congressional candidate; (4) entering the polling places of precincts Nos. 41 and 41–A in the morning of the day of the election, with Liberal Party sample ballots, for the purpose of electioneering; and (5) attending an LP caucus at the barrio of Lemon, Butuan City on August 28, 1953.

The above charges were investigated by a special investigator of this Office, who found the respondent guilty of counts (1), (3) and (4), and recommended his dismissal from office therefor.

The records of the case do not disclose sufficient evidence to sustain counts (2) and (5).

With respect to count (1), the preponderance of the evidence shows that on November 9, 1951, the respondent visited his compadre, Faustino Indoy in the latter's house in barrio Sumilihon, Butuan City, and tried to sway him to join the Liberal Party. As correctly observed by the investigator, "the mere denial on the part of the respondent that he had gone to Sumilihon on the eve of the election cannot offset the positive evidence afforded by Faustino Indoy". Positive evidence has more weight than negative evidence. The respondent is found guilty of this count.

Regarding count (3), it is established by the evidence that at about 4:30 o'clock in the afternoon of November 9, 1953, the respondent was in front of the toll house at barrio Sumilihon, and in a conversation with one Eulogio Garcia, told the latter the following: "I thought you said that Moling (referring to NP Candidate Sanchez) can roll down Cacoy (LP Candidate Calo) with one log. As it is now it turned out that he does not have money and probably he will be rolled down by Cacoy", and that the

respondent at that time had his pockets full of sample ballots of the Liberal Party. He is likewise guilty of this count.

With respect to count (4), the evidence clearly shows that on election day (November 10, 1953) respondent was inside the polling places of precincts Nos. 41 and 41–A both situated in the Similihon barrio school house from 10:00 o'clock a.m. to 3:00 o'clock p.m. with sample ballots of the Liberal Party. I am not impressed with the claim of the respondent that he was in Similihon on the day of the election to visit his farm, it appearing that it was not corroborated by any other witness. If his said claim was true, he could have presented his tenant as a witness to corroborate his defense that he was in his farm and not in the polling places as testified to by several persons. The respondent is also found guilty of this charge.

The law prohibits officers and employees in the Civil Service from engaging directly or indirectly in partisan political activity or take part in any election except to vote (Sec. 2, Art. XII, Constitution). The Constitution does not distinguish between incumbents of classified and unclassified positions in the civil service.

"Political activity" as defined in Civil Service Rule XIII, "shall consist, among other things, in * * * making speeches, canvassing or soliciting votes or political support in the interests of any party or candidates, soliciting or receiving contributions for political purposes, either directly or indirectly, or becoming prominently identified with the success or failure of any candidate or candidates for election to public office".

Active participation of officers and employees in the civil service in partisan political activities corrodes efficiency in the government service. In the interest of good government, partisan political activities should not be tolerated any further.

In view of the foregoing, I hereby order the removal of Mr. Damiano B. Villalba as Chief of the Fire Department of Butuan City.

Done in the City of Manila, this 1st day of November in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 72

CREATING A COMMITTEE TO INVESTIGATE THE SHIPPING INDUSTRY

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a committee to investigate the shipping industry. The committee shall be composed of the following:

Commodore Jose M. Francisco	Chairman
Judge Roman Cruz	Member
Mr. Alfredo de Leon	Member

The Committee is hereby granted all the powers of an investigating committee under sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. It is also authorized to call upon any department, bureau, office, agency or instrumentality of the Government for such assistance or information as it may require in the performance of its functions, and for this purpose, it shall have access to, and the right to examine, any books, documents, papers or records thereof.

This Committee shall submit its report and recommendations within the shortest time possible.

Done in the City of Manila, this 7th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 73

REMOVING MR. PRIMITIVO P. CAMMAYO FROM OFFICE AS ASSISTANT FISCAL OF MANILA

This is an administrative case against Assistant Fiscal Primitivo P. Cammayo of Manila for alleged dishonest

conduct prejudicial to the interest of the service. It is alleged that he asked and received from insular prisoner Domingo Bebania, the complainant, the amount of ₱200 and attempted to get from him a "Texas" fighting cock, assuring the prisoner that he would soon be released from confinement, as the respondent had talked to the former President, his "compadre," but which release never materialized.

The evidence for the complainant tends to show that following the denial by the former President of his petition for conditional pardon, prisoner Bebania requested in writing respondent's help in effecting his release. In response thereto, the respondent want to visit the prisoner at his hut in the New Bilibid Prison. At that meeting the respondent, claiming to be a "compadre" of the former President, assured Bebania that he would attend to the latter's papers. On December 22, 1953, the respondent wrote to Bebania informing him that he was rushing Bebania's papers and that he was going to see the President that same day. In that letter the respondent asked for ₱200 for expenses, as he might possibly have to follow the former President in Baguio. The letter concluded with a promise that the respondent would "try to do all that could possibly be done."

On the following day, December 23, 1953, the respondent visited Bebania personally and reassured him that the release papers had already been signed by the former President. On this occasion, Bebania declared, he gave the respondent the ₱200 requested near the swimming pool situated near the main gate of the prison compound, with no third person present. However, according to Bebania, Policeman Agapito Macatangay noticed the respondent as the latter was departing, which was confirmed by Macatangay to the extent that he did notice a certain person leaving Bebania's hut but that he would not be able to recognize that person should he see him again. Macatangay also stated that Bebania had informed him on that occasion that he, Bebania, had had a visitor and that he would be released the following day.

Two other letters written and sent by the respondent to prisoner Bebania were presented in evidence. The first, dated December 27, 1953, stated that Bebania's papers were in the hands of Dr. Roque (the former Acting Executive Secretary) and that the respondent would definitely know the action of the President by December 29, 1953. The second, dated January 30, 1954, expressed respondent's regrets for his failure to secure the desired pardon and set forth a fresh promise "to do all that is possible" and to send Bebania's papers to me. In this same letter, Bebania was requested to deliver his best "Texas" rooster to the bearer thereof "because he is the one helping me"

(respondent). Bebania admitted orally that he did not deliver the rooster requested.

Prisoner Bebania testified further that on September 16, 1954, he was visited by Ventura Malayao (his uncle) and Augusto Paragua who informed him that they had been requested by the respondent to induce him to withdraw his complaint and retract his statement about having given money to the respondent; and that he accompanied them to the office of the prison superintendent who told them that the matter was already beyond his jurisdiction, the same having been referred to the Department of Justice. The prison superintendent corroborated Bebania's testimony on this point.

In his defense the respondent declared that he had not seen prisoner Bebania since the latter's conviction for parricide eight years before and that he had never received anything from Bebania. To explain his request for ₱200 in his letter of December 22, 1953, the respondent presented Atty. Ramon Encarnacion, who declared that the respondent went to his office several times to secure his services in connection with Bebania's pardon case; that he requested the respondent to ask from Bebania some money for expenses but that none came; and that the respondent had requested him to follow up Bebania's papers in Malacañang, but that when he went there he found out that no application had been filed for Bebania's pardon.

The respondent alleged that the "Texas" rooster he had asked from Bebania was not intended for himself but for his two office mates as a gift, which allegation was confirmed by the latter. He also presented Bebania's uncle, Ventura Malayao, who declared that he came to Manila voluntarily upon being shown a copy of the letter of the Secretary of Justice informing the respondent of Bebania's charges; that Bebania told him that the former was "just mad" at the respondent for the latter's failure to obtain the desired release; and that no money had in fact been given to the respondent.

It is undisputed that prisoner Bebania solicited respondent's help to obtain his release from prison; that the respondent asked from Bebania the amount of ₱200 and a "Texas" rooster; and that the rooster was never delivered to the respondent.

As to whether or not Bebania actually gave ₱200 to the respondent, the fact that prison regulations prohibit possession of money by prisoners and that the prisoners are subjected to periodic unannounced inspection by the prison authorities—so that it could hardly have been possible for Bebania to have accumulated so substantial an amount—would seem to indicate the falsity of Bebania's

claim. Moreover, Bebania has shown himself rather wanting in truthfulness by inserting in his letters to the respondent false statements calculated to evoke the latter's sympathy.

But whether or not the respondent actually received the ₱200, his proven acts show an intent to derive profit from the prisoner's plight. Like Bebania, he has proven himself lacking in truthfulness. For instance, he admitted that he had no intention of following the former President in Baguio and that he meant to send Atty. Encarnacion instead, whereas in his letter to Bebania of December 22, 1953, he gave the impression that he himself might do so. He also admitted that Mr. Abad, the bearer of his letter to Bebania dated January 20, 1954, and designated there as "the one helping him" had had nothing to do with the respondent's supposed efforts to obtain Bebania's release.

The alleged participation in this case of Atty. Encarnacion has not been sufficiently shown. On this point the respondent appears to have involved himself in gross contradiction. Thus, at one time, he alleged that he wished to show that there was a lawyer helping him in the case so that Bebania would know that the ₱200 was not meant for himself. At another time, he declared that he did not wish Bebania to know that he had "hired" a lawyer, as Bebania was of the impression that he could do everything by himself. The conclusion that respondent requested and sought the amount of ₱200 for his own use and benefit is therefore very difficult to resist.

The sum total of the efforts exerted by the respondent in behalf of Bebania consisted, it appears, in writing and filing two petitions for executive clemency, the last of which was denied by the President on June 23, 1954. Whatever expenses these efforts entailed could not possibly have come up to ₱200. As to his request for a fighting cock, even on the assumption that it was really intended for his co-employees, the cold fact remains that he again unconscionably sought to take advantage of a poverty-stricken prisoner by attempting to take away the latter's poor possessions.

The foregoing amply shows that the respondent is guilty of the charge. While respondent's actuations in the premises had no connection with the discharge of his official duties and while he may not have actually succeeded in obtaining what he sought to obtain, yet his acts clearly show his moral unfitness for public service. Observance of the highest standards of personal integrity and decorum is required of all public officials if the Government is to

deserve the trust and confidence of the people. A fiscal, a vital part of the machinery for the administration of justice, who deceives a prisoner hungry for freedom and seeks to extract from him what little he possesses certainly falls far too short of those standards.

Wherefore, Mr. Primitivo P. Cammayo is hereby removed from office as assistant fiscal of Manila, effective upon receipt of notice hereof.

Done in the City of Manila, this 12th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 74

CREATING A SPECIAL EXECUTIVE COMMITTEE FOR THE MOTOR VEHICLES OFFICE TO IMPLEMENT THE REVISED MOTOR VEHICLE LAW AND TO IMPROVE THE OPERATIONAL SETUP AND SERVICES THEREOF

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Special Executive Committee for the Motor Vehicles Office to effectuate the immediate implementation of the recommendations contained in the report submitted by the Special Presidential Committee on the Motor Vehicles Office and the Motor Vehicle Law on June 30, 1954, pursuant to Administrative Order No. 28, dated May 22, 1954.

1. The Special Executive Committee shall be composed of the following:

The Acting Chief, Motor Vehicles Office	Chairman
The Deputy Auditor General, representing the General Auditing Office	Member
The Deputy Budget Commissioner, representing the Budget Commission	Member
The Presidential Complaints and Action Committee Legal Officer and Chief, Investigation Branch rep-	

resenting the Presidential Complaints and Action Committee ..... Member
Mr. Benito Legarda, Technical Assistant, Office of the President ..... Member

2. The Committee is authorized, subject to existing laws and regulations, to introduce such innovations and make such changes in the personnel assignment, office forms, policies and procedures of the Motor Vehicles Office as may carry out more effectively the intent and provisions of the laws on motor vehicles, and promote and maintain integrity, efficiency, economy and maximum utilization of personnel effort in its services and operations.

3. The Committee is further authorized to call upon any department, bureau, office, agency or instrumentality of the Government, or upon any office or employee thereof, for such assistance and information as it may require in the performance of its work, and, for the purpose of securing such information, it shall have access to, and the right to examine, any books, documents, papers, or records thereof.

4. The Committee may submit partial reports and recommendations from time to time, but it shall complete and submit a final report not later than six months from the date hereof. Its final report shall summarize the recommendations contained in the report submitted by the Special Presidential Committee on the Motor Vehicles Office and the Motor Vehicle Law, listing the recommendations which have been implemented and those which have not been implemented and the reasons therefor.

Done in the City of Manila, this 13th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 75

REMOVING MR. IGNACIO T. CUI AS CHIEF OF THE FIRE DEPARTMENT, CALBAYOG CITY, FOR ELECTIONEERING (PARTISAN POLITICAL ACTIVITY)

This is an administrative case against Mr. Ignacio T. Cui, Chief of the Fire Department of Calbayog City, for electioneering (partisan political activity) during the national election held in November, 1953. Specifically, the respondent is charged with having (1) acted as campaign manager of the Liberal Party in Calbayog City; (2) appointed leaders of the Liberal Party in various districts, barrios and sitios in said city, issuing certificates of appointment duly signed by him as campaign manager; and (3) distributed typhoon relief goods at the polling place on election day, thereby creating a scandal therein.

The records of investigation submitted by the special investigator of the above charges show that the respondent was then and still is an active member of the Liberal Party; that he had been in politics since voting age; that the Board of Directors of the Liberal Party of Calbayog City appointed him as campaign manager of the party in said city during the election held on November 10, 1953; that he accepted the said position of campaign manager; that he consented to the use of the facsimile of his signature to be stamped on the certificates of appointment of barrio leaders of the Liberal Party; and that he took a hand in the distribution before election day, of relief goods intended for typhoon victims.

The law prohibits officers and employees in the civil service, whether classified or unclassified, permanent or temporary, except those holding elective positions, from engaging directly or indirectly in partisan political activity or take part in any election except to vote (Sec. 2, Art. XII, Constitution; Sec. 687, Revised Administrative Code).

I, therefore, find the respondent guilty of electioneering (partisan political activity).

In view of the foregoing, the respondent, Mr. Ignacio T. Cui, is hereby removed as Chief of the Fire Department of Calbayog City, effective upon receipt of notice hereof.

Done in the City of Manila, this 15th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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ADMINISTRATIVE ORDER NO. 76

FURTHER AMENDING ADMINISTRATIVE ORDER NO. 37, SERIES OF 1954, AS AMENDED BY ADMINISTRATIVE ORDER NO. 62, SAME SERIES, ENTITLED "CREATING A COMMITTEE TO STUDY AND RECOMMEND IMPROVEMENTS OF THE LAW NATIONALIZING THE RETAIL TRADE"

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby further amend Administrative Order No. 37, series of 1954, as amended by Administrative Order No. 62, same series, so as to include Atty. Efren V. Mendoza as additional member of the Committee created therein.

Done in the City of Manila, this 15th day of November, in the year of our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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ADMINISTRATIVE ORDER NO. 77

CREATING A COMMITTEE TO INVESTIGATE THE ADMINISTRATIVE CHARGES AGAINST MAYOR ARSENIO H. LACSON OF THE CITY OF MANILA

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a committee to investigate the charges filed against Mayor Arsenio H. Lacson of the City of Manila by Messrs.

Francis Yuseco, Gonzalo Santos Rivera, Eriberto Remigio, Hermenegildo Gonzaga, Fausto Alberto, Justo Ibay, Leonardo Garcia, Ruperto Cristobal, and Marciano Santos, all members of the Municipal Board of the City of Manila, involving dishonesty, oppression, and misconduct in office with several specifications. The Committee shall be composed of the following:

Hon. Vicente G. Sinco, Dean, College of Law, University of the Philippines	Chairman
Hon. Pedro M. Gimenez, Deputy Auditor General	Member
Mr. Felix Antonio, Special Prosecutor, Department of Justice	Member

The Committee is hereby granted all the powers of an investigating committee under sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. It is also authorized to call upon any department, bureau, office, agency, or instrumentality of the Government for such assistance or information as it may require in the performance of its functions, and for this purpose, it shall have access to, and the right to examine, any books, documents, papers, or records thereof.

This Committee shall submit its report and recommendations within the shortest time possible.

Done in the City of Manila, this 17th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 78

CREATING A COMMITTEE TO CONDUCT A NATION-WIDE SURVEY OF THE EFFECTS OF THE MINIMUM WAGE LAW

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Committee to conduct a nation-wide survey of the

effects of the Minimum Wage Law and to ascertain the actual social and economic conditions arising from the operation of said law. The Committee shall be composed of the following:

Hon. Sotero Cabahug	Chairman
Dean Jorge C. Bocobo	Member
Dr. Gaudencio Garcia	Member
Dr. Amando Dalisay	Member
Rev. Fr. Pacifico Ortiz, S. J.	Member
Commissioner Enrique M. Fernando	Member

The Committee shall submit its report and recommendations to the President of the Philippines within the shortest time posible.

For the purpose of the nation-wide survey, the Committee is authorized to call upon any department, bureau, office, agency, or instrumentality of the Government for such assistance or information as it may need in the performance of its functions.

Done in the City of Manila, this 18th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 79

DESIGNATING THE NATIONAL RIZAL DAY COMMITTEE

WHEREAS, it is necessary to celebrate the 58th Anniversary on December 30, 1954, of the martyrdom of our greatest hero and patriot, Jose Rizal, so that his life, labors, and death will continue to inspire and guide us in our individual and national life;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, do hereby call upon all our people to observe this year's anniversary of Rizal's death with appropriate ceremonies designed to arouse greater devotion to his ideals.

I hereby designate the following as members of the National Rizal Day Committee:

Hon. Gregorio Hernandez, Jr., Secretary of Education	Chairman
Hon. Eleuterio Adevoso, Secretary of Labor	Member
Hon. Pacita M. Warns, Social Welfare Administrator	Member
Hon. Jesus G. Barrera, Undersecretary of Justice	Member
Hon. J. V. Cruz, Press Secretary	Member
Mr. Manuel Gonzalez, Chairman, Board of Directors, Philippine Charity Sweepstakes	Member
Dr. Vidal A. Tan, President, University of the Philippines	Member
Hon. Teodoro Evangelista, Grand Commander, Knights of Rizal	Member
Mr. Federico Calero, Grand Commander, Manila Chapter, Knights of Rizal	Member
Mr. V. Lontok	Member-Executive Secretary

to make all arrangements necessary for the fitting celebration of the day all over the Philippines and to secure the cooperation of all government and private instrumentalities to insure its success.

Done in the City of Manila, this 20th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 80

CREATING A PRESIDENTIAL ACTION COMMITTEE ON SULU AFFAIRS

WHEREAS, socio-economic problems in the province of Sulu demand immediate solution through the concerted and coordinated efforts of the different departments and offices of the Government in the execution of socio-economic projects;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me

by law, do hereby create a Presidential Action Committee on Sulu Affairs composed of the following:

The Governor of Sulu Province	Chairman
A representative of the Department of National Defense	Vice-Chairman and Coordinator
A representative of the Department of Justice	Member
Two representatives, Department of Finance (Customs, and Provincial Treasurer)	Member
A representative of the Department of Public Works and Communications	Member
A representative of the Department of Education	Member
A representative of the Department of Health	Member
Three representatives, Department of Agriculture and Natural Resources (Lands, Fisheries, Forestry)	Member
A representative of Social Welfare Administration	Member
A representative of the Office of Economic Coordination	Member
A representative of the Agricultural Credit and Cooperative Financing Administration	Member
The Provincial Commander, PC	Member

The Committee shall from time to time, in the study and implementation of projects, consult with prominent residents and the people of the province and locality.

The Committee shall study, plan, coordinate and execute the projects on education, health, land surveys and resettlement, public works, social aid and welfare, and labor placement directed by the President, and such other socio-economic measures as it may deem necessary for the amelioration of the people of Sulu.

The Committee is hereby authorized to call upon any department, bureau, office, agency, or instrumentality of the Government for such assistance or information as it may need in the performance of its duties and functions.

The Committee shall render a quarterly report on the progress of its activities to the President.

Done in the City of Manila, this 20th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 81

DISMISSING THE ADMINISTRATIVE CASE AGAINST COL. TELESFORO TENORIO, CHIEF OF POLICE OF MANILA, AND REINSTATING HIM IN OFFICE

In view of the acquittal of Col. Telesforo Tenorio, Chief of Police of Manila, of the crime of qualified theft of which he was accused in Criminal Case No. 29053 of the Court of First Instance of Manila, after the court had found that he did not commit the said offense, and as the act imputed to him in that case is the basis of the administrative case filed against him with this office, by reason of which he was suspended, I, Ramon Magsaysay, President of the Philippines, do hereby dismiss the administrative case against Col. Telesforo Tenorio and reinstate him in office immediately.

Done in the City of Manila, this 21st day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 82

CREATING A COMMITTEE TO STUDY THE CONDITIONS OF INTRAMUROS AND MAKE RECOMMENDATIONS AS TO ITS TREATMENT AND DISPOSITION

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Committee composed of the following:

Mr. Anselmo T. Alquinto, Director of Planning .... Chairman
Mr. Andres O. Hizon, Director of Coast and Geodetic Survey ..... Member
Mr. Juan Nakpil, Architect ..... Member
Mr. Oscar Arellano, Architect ..... Member
Mr. Carlos Da Silva, Architect ..... Member

to study the conditions obtaining in the Walled City in Manila, otherwise known as Intramuros, and to make recommendations as to the best method of dealing with the said place in connection with the city planning and improvement, taking into consideration the best possible way of utilizing the same to advantage under present circumstances, without totally obliterating its historical and cultural significance.

The Committee shall submit its report and recommendations within the shortest possible time.

Done in the City of Manila, this 23rd day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 83

EXONERATING VICE-MAYOR MANUEL VILLANUEVA OF BACOLOD CITY

This is an administrative case against Vice-Mayor Manuel Villanueva of Bacolod City, for (1) violation of section 53 of the Revised Election Code (carrying a pistol during the day of the voting on November 10, 1953 within thirty meters from the polling places of Precincts Nos. 65 and 65–A of Bacolod City); (2) violation of the executive order prohibiting the carrying of firearms during election; (3) illegal possession of firearm; and (4) carrying firearm without valid permit (distinct from permit to possess firearm). These charges were investigated by a special investigator of this Office.

Regarding the first charge, it appears that at about 10:30 on the morning of November 10, 1953 (election day),

Sergeants Prudencio Blase and Salvador Cañada of the Philippine Constabulary confiscated from Vice-Mayor Villanueva, who was then on inspection of Precincts Nos. 65 and 65–A located at Barrio Sto. Niño, Bacolod City, a Colt pistol, Cal. 38, Serial No. 71372, together with the provisional permit to carry the said firearm issued on November 2, 1952 by the Chief of Police of Bacolod City. There exists a dispute as to the precise place and manner of the confiscation of the said pistol. The complainant and his witnesses claimed that Sergeants Blase and Cañada and Pfc. Enrique Rife apprehended the respondent with the pistol tucked in his waist about 4 meters away from the polling places of Precincts Nos. 65 and 65–A. On the other hand, the respondent claimed that in the course of his inspection of precincts in his capacity as acting mayor, he stopped his car at Barrio Sto. Niño at about 10:30 a.m. on November 10, 1953, at a distance of between 40 to 42 meters away from the polling places of Precincts Nos. 65 and 65–A, and that while he was standing and leaning at the car to observe the surroundings, Sgt. Cañada approached and asked him his revolver telling him that he (Cañada) received information that he (respondent) was carrying a revolver; that the respondent, acknowledging he was carrying a revolver, ordered forthwith his driver, Patrolman Octavio to get it from the front compartment of the car; that he delivered it to Sgt. Cañada who returned the revolver to him (respondent) after seeing the provisional permit issued by the chief of police; that later on Sgt. Cañada returned telling him that he was ordered by Sgt. Blase to get back the pistol; and that he handed the pistol to Sgt. Cañada. This testimony was corroborated by Patrolman Octavio and Mr. Jaime Batapa, MPM Coordinator for Bacolod City.

The Chairmen of the Board of Election Inspectors in Precincts Nos. 65 and 65–A and the Poll Clerk in the latter precinct testified to the effect that they had not seen Vice-Mayor Villanueva near the polling place in their respective precinct during the whole day on November 10, 1953; and that the election therein had been peaceful and orderly and no untoward incidents took place. The minutes of the proceedings of the said boards do not record any confiscation of firearm during the day of the voting. The ocular inspection conducted in the premises revealed that the polling places were not clearly visible from the place where Sgt. Blase parked his car, because of the houses in between as well as tall trees with protruding branches surrounding the polling places so that it would have been almost impossible for Sgt. Blase to see people and what they were doing near the said polling places.

After carefully going over the evidence on record, I find that the respondent's contention that the confiscation of his firearm took place beyond the thirty-meter distance from the polling places of Precincts Nos. 65 and 65–A, is sustained by a clear preponderance of the evidence.

The other charges against the respondent, for violation of the executive order prohibiting carrying of firearm, illegal possession of firearm, and carrying firearm without permit are interrelated to each other and may be discussed jointly.

The records show that the respondent donated to the Police Department the pistol above-described, which was reissued to him by the Chief of Police of Bacolod City under provisional permit on November 2, 1953; that it was this same pistol that he carried on the morning of November 10, 1953, together with his provisional permit, which reads:

"This is to certify that Mr. Manuel M. Villanueva, Vice Mayor, City of Bacolod is authorized to carry firearm, Colt, Automatic Super 38, with Serial Number 71372, as service arm in connection with his official duties as such.

"This authority will remain in force while he is vested with such authority and while he remains to be in active duty in the service with this Department".

Executive Order No. 290, series of 1949, as amended by Executive Orders Nos. 294 and 296, same series, prohibit private parties from carrying their licensed firearms outside of their respective residences without special permit from the nearest Constabulary headquarters. It does not apply to peace officers.

The evidence shows that the respondent went on inspection of polling places in the interest of peace and order in the morning of the election day in the honest belief that he was an Acting Mayor, Mayor Amante, then concurrently acting provincial governor of Negros Occidental, being then on official trip in the southern part of the province. Whether or not he was legally the acting mayor on that day and therefore entitled to carry a firearm, is immaterial in the determination of his guilt, for there can be no dispute as to the fact that he was a peace officer under section 25 of Commonwealth Act No. 326, otherwise known as the Charter of Bacolod City, which provides that "the chief of police, *all city officers,* and all members of the police force and secret service shall be peace officers", etc. As Vice-Mayor and peace officer, he was authorized to carry a firearm. An examination of the phraseology of the provisional permit above-quoted issued by the Chief of Police shows that the said permit was issued to the respondent as vice-mayor and peace officer in accordance with the provisions of the Charter.

In view of the foregoing, the respondent is hereby exonerated from the aforementioned charges against him. As he is now under preventive suspension, his immediate reinstatement into the service is hereby ordered.

Done in the City of Manila, this 24th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

PROVINCIAL CIRCULAR
(Unnumbered)

October 23, 1954

PROHIBITION OF LABOR ON SUNDAY, CHRISTMAS DAY, ETC., UNDER REPUBLIC ACT NO. 946, KNOWN AS BLUE SUNDAY LAW.

To all Provincial Governors and City Mayors:

For your information and guidance, there is quoted hereunder the following letter of the Secretary of Labor to the Executive Secretary dated October 15, relative to the Rules and Regulations to implement the provisions of Republic Act No. 946, commonly known as the Blue Sunday Law, copy of which is enclosed herewith:

"I have the honor to enclose copies of our Rules and Regulations to Implement the provisions of Republic Act No. 946, commonly known as the Blue Sunday Law, enumerating the establishments and enterprises which may operate on Sunday, Christmas Day, New Year's Day, Holy Thursday and Good Friday, as an exception to the law. It will be seen from said rules and regulations that automatic exemptions are of two kinds: those which are provided by the law itself, and those which are authorized by the Secretary of Labor pursuant to his authority to broaden those exemptions. In both cases, the establishments or enterprises concerned need not secure a permit from the Department of Labor.

"On the other hand, specific written permits may be secured from the Secretary of Labor in other cases not enumerated in the regulations where the activities or work involved cannot be interrupted or are so indispensable that they cannot be delayed without causing serious prejudice or obstruction to the business or enterprise concerned.

"Written permits may also be issued by a municipal or city mayor, municipal councilor or barrio lieutenant, as the case may be, in emergency cases, which are being interpreted in the regulations as those produced by *force majeur*.

"In this connection, I would like to request that provincial governors and city and municipal mayors be apprised of the provisions of these rules and regulations and requested to inform their respective constitutents accordingly, to prevent submittal of unnecessary petitions for exemptions in the cases already covered by the rules. Moreover, it is believed necessary to advice the municipal officials concerned against issuing Blue Sunday emergency permits in cases where no real emergency exists.

"In addition, I would like also to secure your help in requesting provincial, city and municipal officials to urge employers in their respective localities who may take advantage of the exemptions provided in the rules and regulations, to employ new sets of workers for work on Sundays and other holidays, as a measure of cooperation with the government in its efforts to reduce unemployment and at the same time avoid overworking those who are already engaged in gainful occupations. This can easily be done by giving regular employees one day off during the week and requiring them to work on Sunday or holiday to act as guide of new employees who will be hired on such days. The scheme is not only practicable, but will redound to the best interests of the people of the provinces and municipalities wherever these rules and regulations are taken advantage of.

"We shall be glad to be informed of such action as may be taken on this matter."

Compliance with the request contained in the penultimate paragraph of the letter is hereby enjoined.

ENRIQUE C. QUEMA
Assistant Executive Secretary

PROVINCIAL CIRCULAR
(Unnumbered)

November 4, 1954

PEACE THROUGH PRAYER DAY—DECEMBER 5, 1954

To all the Provincial Governors and City Mayors:

For your information and guidance, there is quoted hereunder Proclamation No. 84 declaring December 5, 1954, as Peace Through Prayer Day:

"WHEREAS, peace is the common concern and obsession of all mankind; and

"WHEREAS, there can be no durable peace, peace with justice and dignity, unless it is build on some spiritual foundation in the hearts and souls of men;

"NOW, THEREFORE, I, Ramon Magsaysay, President of the Philipipnes, do hereby declare December 5, 1954, as Peace Through Prayer

Day. I call upon all the people and residents of the Philippines, regardless of race or creed, to take active part in the observance of this day to the end that we may enjoy the blessings of true and lasting peace.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Manila, this 27th day of October, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth."

It is urged that the contents hereof be transmitted to all the local officials under your jurisdiction for their information and guidance.

ENRIQUE C. QUEMA
Assistant Executive Secretary

CIRCULAR

November 6, 1954

NATIONAL FUND CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION—NOVEMBER 5 TO DECEMBER 18, 1954.

To all Provincial Governors and City Mayors:

Under Proclamation No. 88 issued by the President on November 1, 1954, the period from November 5 to December 18, 1954 has been set as the National Fund Campaign of the Liberty Wells Association. In connection with this drive, the Association has designated the undersigned as Chairman of the Provincial and Chartered Cities Division.

As stated in the Proclamation, the Liberty Wells Association has been doing a splendid job in providing the rural areas with artesian wells, for which the Association is in need of funds to carry out as speedily as possible its noble and worthy mission of strengthening and broadening the foundation of the Republic.

Out of our total population of 21,500,000, more than 16,900,000 still depend on doubtful or polluted water. In view hereof, the construction of artesian wells is now getting top priority in the rural improvement program of the government. As it is widely known, the building of artesian wells is a pet project of the President. It is, therefore, enjoined that all local officials be urged to give their wholehearted support and cooperation in this campaign.

In his Proclamation above mentioned, the President calls upon all residents, firms and organizations all over the country to support the campaign, and authorizes all government officials and school authorities and teachers to accept, for the Liberty Wells Association, P. O. Box 611, Manila, fund-raising responsibilities and to give it active support and leadership in their respective communities.

It is urged that the contents hereof be transmitted to all the local officials under your jurisdiction for their information and guidance.

SOFRONIO C. QUIMSON
Technical Assistant and Incharge
Civil Affairs and Chairman,
Provincial and Chartered Cities
Division Liberty Wells Association

Department of Justice

ADMINISTRATIVE ORDER NO. 149

October 12, 1954

JUDGES ASSIGNED AS MEMBERS OF THE GUERRILLA AMNESTY COMMISSIONS PURSUANT TO THE PROVISIONS OF ADMINISTRATIVE ORDER NO. 11 OF THE PRESIDENT OF THE PHILIPPINES.

Pursuant to the provisions of Administrative Order No. 11 of His Excellency, the President of the Philippines and in view of the appointments of new Judges of First Instance, the herein below named judges are hereby assigned as members of the following Guerrilla Amnesty Commissions:

First Commission

Judges Benardino Quitoriano, Manuel Arranz, Jose R. de Venecia and Juan M. Ladaw—for the provinces of Cagayan, Isabela, Nueva Vizcaya and Batanes;

Second Commission

Judges Julio Villamor, Francisco Geronimo, Jose M. Mendoza and Juan O. Reyes—for the provinces of Ilocos Norte, Ilocos Sur, Abra and La union;

Third Commission

Judges Segundo Martinez, Jesus de Veyra, Agustin P. Montesa and Lucas Lacson—for Mountain Province and City of Baguio, provinces of Pangasinan, Zambales and Nueva Ecija;

Fourth Commission

Judges Bernabe de Aquino, Arsenio Santos, Ambrosio Dollete and Angle H. Mojica—for the provinces of Tarlac, Pampanga, Bataan and Bulacan;

Fifth Commission

Judges Gregorio S. Narvasa, Edilberto Barot, Magno S. Gatmaitan and Aresenio Solidum—for the City of Manila;

Sixth Commission

Judges Juan P. Enriquez, Nicasio Yatco, Primitivo Gonzales and Juan L. Bocar—for the provinces of Rizal, Cavite and Palawan;

Seventh Commission

Judges Rafael Amparo, Ramon San Jose, and Fidel Ibañez—for cases from the different prov-

inces and cities now pending appeal in the Supreme Court;

Eighth Commission

Judges Federico Alikpala, Manuel Barcelona, Vicente del Rosario and Eusebio Ramos—for the provinces of Laguna (including San Pablo City), Quezon, Batangas, Mindoro and Marinduque;

Ninth Commission

Judges Jose T. Surtida, Melquiades Ilao, Mateo Alcasid, and Genero Tan Torres—for the provinces of Camarines Sur, Camarines Norte, Albay, Catanduanes, Sorsogon and Masbate;

Tenth Commission

Judges Jose Evangelista, F. Imperial Reyes, Pantaleon Pelayo and Ruberto Zurbano—for the provinces of Capiz, Iloilo, Antique and Romblon;

Eleventh Commission

Judges Francisco Arellano, Clementino V. Diez, Jose Rodriguez and Inocencio V. Rosal—for the provinces of Occidental Negros, Oriental Negros, Siquijor and Cebu;

Twelfth Commission

Judges Fidel Fernandez, Cirilo Maceren, Ignacio Debuque and Hipolito Alo—for the provinces of Samar, Leyte and Bohol;

Thirteenth Commission

Judges Patricio Ceniza, Jose F. Fernandez, Francisco Arca and Segundo Apostol—for the provinces of Surigao, Agusan, Occidental Misamis, Oriental Misamis, Bukidnon and Lanao; and

Fourteenth Commission

Judges Pablo Villalobos, Enrique Fernandez, Macapanton Abbas and Antonio Lacson—for the provinces of Zamboanga del Norte, Zamboanga del Sur, Sulu (including Basilan City), Davao and Cotabato.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 152

November 2, 1954

AUTHORIZING JUDGE EMILIO BENITEZ, COURT OF FIRST INSTANCE OF SAMAR AND CALBAYOG CITY TO HOLD COURT IN THE MUNICIPALITY OF GUIUAN, SAMAR TO TRY ALL KINDS OF CASES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, as amended, the Honorable Emilio Benitez, Judge of the Thirteenth Judicial District, Court of First Instance of Samar and Calbayog City, Second Branch, is hereby authorized to hold court in the Municipality of Guiuan, province of Samar, during the month of December, 1954, for the purpose of trying all kinds of cases and to enter judgment therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 153

November 8, 1954

APPOINTING ATTY. MARIANO L. MERCADO AS CHAIRMAN AND ATTYS. VICTORINO PASCASIO AND MANUEL LINTAG AS MEMBERS OF A SPECIAL COMMITTEE TO LOOK INTO THE DOCKETS AND RECORDS OF THE COURT OF FIRST INSTANCE OF MANILA.

In the interest of the public service, the following officials of the Department of Justice are hereby appointed members of a Special Committee which shall look into the dockets and records of the Court of First Instance of Manila with a view to determining if said records are in order especially with reference to execution of forfeited bonds.

Atty. Mariano L. Mercado, Chairman
Atty. Victorino Pascasio, Member
Atty. Manuel Lintag, Member

This order also includes authority to look into the conduct of all or any officer or employees in the Clerk of Court's Office particularly with regard to the observance of office hours.

The Committee shall submit its report to the undersigned on the progress of its work from time to time.

The Clerk of Court of the Court of First Instance of Manila and all the court personnel are hereby enjoined to extend their cooperation to the members of the Committee.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 154

November 8, 1954

DISTRIBUTION OF CASES AMONG THE THREE BRANCHES OF THE COURT OF FIRST INSTANCE OF QUEZON PROVINCE.

In view of the creation, under Republic Act No. 296, as amended, of an additional branch in the Court of First Instance of Quezon, Ninth Judicial District, with station in Gumaca, and considering the transportation facilities, means of communication, the distance between the different municipalities and the seats of the three branches of the said court (two in Lucena and one in Gumaca), and the probable number of cases to be filed in the respective branches, the cases coming from the different municipalities of the province

are hereby distributed among the three branches of the Court, as follows:

The Judges of the First and Second Branches, with Station in Lucena, shall take cognizance of the cases coming from the following municipalities:

1. Aurora
2. Mulanay
3. Unisan
4. Agdangan
5. Padre Burgos
6. Lucena
7. Sariaya
8. Candelaria
9. Tiaong
10. Dolores
11. Tayabas
12. Lucban
13. Sampaloc
14. Mauban
15. Pagbilao
16. Baler
17. Maria Aurora
18. Dipaculao
19. Casiguran
20. Infanta
21. General Nakar
22. Polillo
23. Burdoos

The Judge of the Third Branch, with station in Gumaca, shall take cognizance of the cases coming from the following municipalities:

1. Atimonan
2. Perez
3. Alabat
4. Quezon
5. Gumaca
6. Lopez
7. Calauag
8. Macalelon
9. General Luna
10. San Narciso
11. Catanauan
12. Guinayangan
13. Pitogo
14. Buenavista
15. Tagkawayan

provided, however, that whenever the interest of the administration of justice so requires, any judge of the three branches of the Court of First Instance of Quezon may try any case coming from any municipality, with the previous approval of this Department.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 155

November 8, 1954

DESIGNATING JUSTICE OF THE PEACE IGNACIO ABRAGAN OF MOMUNGAN, BALUT PONTAO RAGAT AND PANTAR, LANAO AS ACTING MUNICIPAL JUDGE OF ILIGAN CITY.

In the interest of the administration of justice and pursuant to the provisions of section 76 of Republic Act No. 525, otherwise known as the Charter of the City of Iligan, Mr. Ignacio Abragan, Justice of the Peace of Momungan, Balut, Pantao Ragat and Pantar, Lanao, is hereby designated Acting Municipal Judge of Iligan City effective immediately and to continue only until the assumption of office of the regular incumbent.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 156

November 8, 1954

AUTHORIZING JUDGE DAMASO TENGCO OF LEYTE AND THE CITIES OF TACLOBAN AND ORMOC TO HOLD COURT IN NAVAL, LEYTE TO TRY ALL KINDS OF CASES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, as amended, the Honorable Damaso Tengco, Judge of the Thirteenth Judicial District, Court of First Instance of Leyte and the Cities of Tacloban and Ormoc, Sixth Branch, is hereby authorized to hold court in the municipality of Naval, province of Leyte, during the month of January, 1955, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF ANIMAL INDUSTRY

ANIMAL INDUSTRY ADMINISTRATIVE ORDER NO. 5

RULES AND REGULATIONS GOVERNING THE HANDLING OF DANGEROUS COMMUNICABLE ANIMAL DISEASES, THE INTERPROVINCIAL MOVEMENT OF ANIMALS AND THE USE OF ANTHRAX AND RINDERPEST SERUM AND VACCINE AND OTHER BIOLOGICAL PRODUCTS IN THE CONTROL, DIAGNOSIS AND TREATMENT OF ANTHRAX, RINDERPEST AND OTHER CONTAGIOUS AND INFECTIOUS ANIMAL DISEASES.

Pursuant to the provisions of section 1765 (*g*) of the Revised Administrative Code, as amended by Act No. 3639; and of Acts No. 3119 and No. 3166, the following rules and regulations are hereby promulgated for the information and guidance of all concerned:

ARTICLE I—TITLE

SECTION 1. This Order shall be known as the Animal Disease Control Rules and Regulations.

ARTICLE II—DEFINITIONS

SEC. 2. For the purpose of this Order, the following words, phrases, names and terms herein used shall be construed to mean as follows:

(*a*) *Veterinarian*—a graduate veterinarian under the employ of the Bureau of Animal Industry.

(*b*) *Livestock Inspector*—lay inspector under the employ of the Bureau of Animal Industry.

(*c*) *Person*—any individual, firm, partnership, corporation, company, society, association or other

organized group of any of the foregoing or their agent, representative, officer, employee, livestock owner, caretaker, etc.

(*d*) *Animals*—horses, mules, asses, cattle, carabaos, buffaloes, tamaraos, sheep, goats, swine, poultry, birds, rabbits, cats, dogs, deer, wild hogs, circus and pet animals, and those intended to be used for diagnostic and experimental purposes.

(*e*) *Large Cattle*—horses, mules, asses, cattle carabaos, buffaloes, tamaraos, and other domesticated members of the equine, bovine and bubaline families.

(*f*) *Small animals*—sheep, goats, swine, birds fowls or poultry, dogs, cats, deer, small circus and pet animals and those intended for diagnostic and experimental purposes, as rabbits, hamster, guinea pigs, mice, etc.

(*g*) *Dangerous Communicable Animal Diseases*—shall apply to, and include, all acute or chronic animal diseases communicable from one animal to another or from animal to human (zoonosis) being or vice versa, capable of inflicting economic losses or is detrimental to public health, or which may cause mortality of over five per centum during a period of one month or may cause economic losses on the intrinsic value of the animals affected.

(*h*) *Positive case*—an animal showing the characteristic clinical symptoms peculiar to the disease and is confirmed by laboratory tests or microscopical examination.

(*i*) *Suspect*—an animal or animals that have been in contact with the infected animal or animals and those animals that may not be susceptible to the disease but are capable of spreading the disease mechanically due to contact with infected ones and those animals that do not give complete reaction to the test before or a year after vaccination.

(*j*) *Carrier*—an animal convalescing from an infectious disease or naturally harbors the infection but does not show any signs or symptoms of the infection but eliminates the micro-organisms and thus spreads the disease.

(*k*) *Reactor*—non-vaccinated animal that has given positive reaction after test or in brucellosis vaccinated animals those that have given positive reaction 12 to 18 months after the vaccination.

(*l*) *Vaccinate*—in Brucellosis, when used as a noun shall mean a vaccinated animal while within 6 to 12 months from vaccination.

(*m*) *Herd or flock*—shall mean any number of cattle, carabaos, buffaloes, horses, sheep, goats, swine and poultry under one management, maintained in one premise which are allowed to associate or contact one another.

(*n*) *A negative herd or flock*—is one in which no reactors or suspects were found in the last test.

(*o*) *Positive herd or flock*—is one in which one or more reactors and suspects were found in the last test.

(*p*) *A suspect herd or flock*—is one in which one or more suspects but no reactors were found on the last test.

(*q*) *Branding or marking*—all animals found positive or reactor for animal disease that are either incurable or which menace public health like glanders, tuberculosis, contagious abortion or Bang's disease shall be branded G, TB and B, respectively, on the forehead, using hot iron or chemical brands for identification purposes by a representative of the Director of Animal Industry.

(*r*) *Incurable diseases*—are those that are not either readily cured, prevented and controlled by medicine or biologics or which will endanger public health like glanders, tuberculosis, rabies and contagious abortion.

ARTICLE III—FROM THE STANDPOINT OF DISEASE CONTROL WORK, TWO CLASSES OF DANGEROUS COMMUNICABLE ANIMAL DISEASES TO BE CONSIDERED ARE THE ENZOOTIC DISEASES AND THE EXOTIC DISEASES.

SEC. 3. The enzootic diseases are those already known to prevail in this country, either indigenous or exogenous, such as:

(*a*) Those affecting equine family as horses, mules and asses: surra, glanders, stangles, anthrax, influenza, epizootic lymphangitis and tetanus.

(*b*) Those affecting bovine and bubaline families (cattle, carabaos and buffaloes): anthrax hemorrhagic septicemia, foot-and-mouth disease, tuberculosis, contagious abortion or Bang's disease, surra and anaplasmosis and piroplasmosis in cattle only.

(*c*) Those affecting swine: hog cholera, swine plague, tuberculosis, foot-and-mouth disease, contagious abortion, kidney worms, swine erysipelas, swine pox, infectious pneumonia, and infectious diarrhea.

(*d*) Those affecting sheep and goats: anthrax, hemorrhagic septicemia, tuberculosis, contagious abortion and psuedo tuberculosis or caseous lymphadenitis and contagious ecthyma.

(*e*) Those affecting poultry: avian pest or New Castle disease, fowl pox, fowl cholera, roup, coccidiosis, leucosis complex and blackhead in turkeys.

SEC. 4. The exotic diseases are those known to exist in other countries which are likely to be introduced here, and are as follows: equine encephalemyelitis, equine virus abortion, dourine, infectious anemia in horses, contagious pleuro-pneumonia, rinderpest, infectious keratitis, leptospirosis, blackleg, Johne's disease and necrobacillosis in cattle; listerosis of cattle and swine, atrophic rhinitis, vesicular exanthema, trichinosis and infectious pneumonia in swine and fowl encephalemyelitis, infectious laryngo-tracheatis, pullorum fowl typhoid, air sac or infectious bronchitis of fowls.

ARTICLE IV—THE SCOPE OF QUARANTINE, PREVENTION AND CONTROL OF ANY OF THE DANGEROUS COMMUNICABLE ANIMAL DISEASES.

SEC. 5. Reporting and investigation of diseases—

It shall be the duty of the owner, manager, practicing veterinarians, caretaker, agent or employee or in charge of a herd or flock or any other person having knowledge thereof to report to the nearest veterinary office (government) or, in its absence, to the barrio lieutenant without the least delay any case of sickness or deaths that has come to his knowledge of large cattle or small animals owned by him or under his care, who shall in turn cause the same to be transmitted to the City or Municipal Mayor as the case may be, giving the name and address of the owner and some of the apparent symptoms manifested. The Mayor shall immediately transmit said report to the veterinarian in-charge of the province or his representative and to the Provincial Governor.

Upon receipt of the report, the investigation should be conducted immediately by the veterinarian himself on the nature, duration and extent of the infection. If the investigation discloses that the animal died or is suffering from any of the dangerous communicable animal diseases mentioned herein, like rinderpest, foot-and-mouth disease and epidemic form of anthrax, hog cholera, etc., a quarantine order under the authority of the Director of Animal Industry shall be served in writing to the Mayor of the City, Municipality or Municipal District concerned, giving the name and nature of the disease and conditions of the said quarantine, the barrio or barrios affected. The Veterinarian in-charge shall promptly make special report and recommendations to the Director of Animal Industry on the matter, furnishing a copy to the Provincial Governor for his information.

SEC. 6. Handling suspects and exposed animals—

All animals that have been in contact with infected animal and are susceptible to the particular disease against which quarantine has been declared, shall be isolated near the place where they are found until it has passed the incubation period of two weeks. All small animals which have been in contact with other infected animals and may be capable of transmitting the disease shall likewise be isolated.

SEC. 7. Quarantine power of the Director of Animal Industry and his duly authorized representatives—

(*a*) The Director of Animal Industry or his duly authorized representatives are authorized to examine and make test or treatment as the case may be, if they have reason to believe that a dangerous communicable animal disease is in existence therein; to quarantine animals and premises; to require the disposal of the animals by any reputable method, and should any such animal be found to be infected, the Director of Animal Industry or his duly authorized representative shall have the power to quarantine such animal or animals and all the premises as the Director or his agent may deem proper to prevent the spread; to require the slaughter and disposal of any such animals found to be infected with any of the dangerous communicable animal diseases.

(*b*) It shall be unlawful for any person to change, remove, conceal, substitute any tag, brands, label or mark, fixed, fastened or set by the Director of Animal Industry or his agents, upon any animal, place or premises.

(*c*) Upon discovery of dangerous communicable animal disease in stock yards, corrals, vessels, cars and pens, or any other place, the premises shall immediately be put under quarantine and animals should not be removed until proper permit is granted by the Director of Animal Industry.

(*d*) In case of vessels, vehicles, or other form of conveyance, the animals concerned shall only be permitted to be unloaded to an isolated place designated by the Director of Animal Industry. Such conveyance should be thoroughly disinfected at the expense of the owner, operator or agent before clearance can be issued.

(*e*) Upon the discovery of a dangerous communicable animal disease in a barrio, the said barrio shall be placed under quarantine by serving written notice to the Mayor concerned, who shall execute all the terms and conditions given in the quarantine order. The Mayor shall notify the barrio inhabitants concerned through the barrio lieutenant or any of his agents, the terms and conditions of the order. All animals susceptible to the particular disease except those which are used for agricultural purposes, as hereinafter provided, must be kept tied up 15 meters apart throughout the quarantine period. All the individual corrals of the animals shall be constructed at least one hundred meters away from the nearest house, road or trail, river or creek. Mother and calf are to be kept together in the same corral. These corrals shall be kept clean daily, burying the waste and unused feed in a hole of not less than a meter deep dug for the purpose.

(*f*) If a case occurs at or near the boundary line of a barrio, one-half to one kilometer radius of the adjoining barrio, as the case may warrant shall be included.

(*g*) Any animal that may have left the infected barrio within seven days from the date of discovery of the case, is considered exposed and shall be placed under quarantine where found. However, if in the opinion of the veterinarian in-charge, it can be moved back with safety, it shall be returned to the said barrio.

(*h*) Small animals such as dogs, hogs, sheep and goats or fowls which are capable of transmitting the disease shall be restrained by their

respective owners or caretakers from running at large from or to the quarantine area during the duration of the quarantine. Any small animal or poultry which by chance has entered the isolation corral shall be killed and buried.

SEC. 8. Vigilance and surveillance of animals in infected and adjoining barrios—

During the quarantine period and a few months thereafter, all the animals in the infected barrio found sick of the disease by the veterinarian, livestock inspectors, municipal policeman or P. C. soldiers assigned thereat shall be sent immediately to the isolation corral. The place shall be thoroughly cleaned and disinfected. The excreta and urine from the sick animal while in transit to the isolation corral must be saturated with disinfectant, buried or burnt.

The animals in the barrios adjoining infected barrio or barrios shall be tethered to prevent them from entering the quarantined barrio and facilitate close surveilance by the quarantine officers.

Astray susceptible animals caught in the quarantine zone should be impounded by the municipality in the quarantine zone until the quarantine is over and their release from quarantine shall be authorized by the Director of Animal Industry or his authorized representative.

SEC. 9. Construction of isolation corral and its management—

It shall be the duty of the City or Municipal Mayor concerned to cause the construction of isolation corral or corrals in the infected barrio within 24 hours after the discovery of the animal disease requiring quarantine. These corrals shall be located in an isolated place, well drained and at least 100 meters away from the nearest house, road, trail, river and brook. These corrals must be at least ten meters square, with double fence, four meters apart from each other. The fence must be so made as to prevent the entrance of hog, dog, chicken and other small animals. A hole of not less than one meter square and two meters deep shall be excavated in one of the corners of the inner inclosure a meter from the inner fence for the disposal of all waste and unused feed materials. A trench not less than six decimeters deep be dug encircling the outer fence so as to catch all drainage from the corral. The trench shall be disinfected daily. The space between the two fences shall be used for burying the dead animals.

Shed shall be provided for each sick animal confined in the corral. All infected animals found in the barrio must be confined in the inner corral until completely recovered and released by written order of the Director of Animal Industry or his authorized agent.

The isolation corrals must be under competent caretakers who shall manage the corral under the supervision of a veterinarian or livestock inspector. The caretakers shall take care of the sick animals, providing the same with feed and drink; and shall keep the corral scrupulously clean, disinfected and well drained. On leaving the corral, every person shall thoroughly disinfect his hands and feet with strong solution of creoline. Clothes used for working inside the corral shall not be used outside until laundered.

The feed and water for the sick animal shall be deposited 10 meters from the corral where the caretaker shall receive them. Ropes, baskets and other cheap articles shall not be taken away from the corral but shall be burnt. Costly articles may be moved away after being thoroughly disinfected.

SEC. 10. Use of animal in quarantined areas—

The use of work animals in a barrio infected with rinderpest, foot-and-mouth disease, etc. may be permitted by the veterinarian in-charge when urgently necessary under the conditions as hereinafter provided. Such permission may be granted by issuance of work pass which shall bear no definite period and is subject to revocation at any time as necessity arises. A recently issued certificate of rinderpest vaccination or immunization against rinderpest may be considered as work pass in an infected territory.

SEC. 11. In the issuance of work passes especially in case of rinderpest and foot-and-mouth disease, the following rules shall be observed—

(*a*) Passes shall be issued only for work animals absolutely necessary for cultivating the land or hauling of perishable essential articles or for the security of the animals. The pass shall be issued only by the Director of Animal Industry or his duly authorized representative.

(*b*) The work pass shall show the following data:

(1) The name and address of the worker,
(2) species and description of the animal to be used including the Document number, and
(3) the nature of work to be done in the infected barrio.

(*c*) Any owner or caretaker applying for work pass shall first construct an individual corral on or near the land he works. The corral must be 15 meters apart from the other for each animal granted pass.

(*d*) Animals not in use shall be confined in the corral. Animals while working or enroute to the field shall not be permitted to come in contact with each other or with other animals.

(*e*) Calves shall be confined in the corral while their dams (mothers) are used for work.

(*f*) No animal shall be bathed or allowed to drink in any river, creek, pond or the like.

(*g*) No pass shall be given to suspects or exposed animals.

(*h*) No pass shall be issued to any owner or caretaker unless he first submit all his animals for immunization or comply with the provisions of the next preceding section.

(*i*) Any violation of the provisions of section 11 shall be considered just cause for the revocation of the pass.

SEC. 12. Notification of officials in the neighboring provinces—

Whenever any dangerous communicable animal diseases, like rinderpest and foot-and-mouth diseases, epidemic form of anthrax and hemorrhagic septicemia and other diseases exist in any municipality, the veterinarian having jurisdiction of the infected province shall notify immediately the veterinarians, Provincial Governor, the P. C. Provincial Commander of the adjoining provinces and the Mayor of the city or municipality concerned so that they may be guided in taking all the necessary precautionary measures in preventing same from spreading to their respective territories.

SEC. 13. Quarantine of highways—

In the case of infectious disease, like rinderpest and foot-and-mouth disease in barrios bordering the public highways which cannot be closed to traffic without occasioning great inconvenience to the traveling public, stations shall be established on the highway, at least half kilometer distant from either end of the infected barrios, in which stations all animals affected shall be halted, and thence taken through the said barrio in trains at fixed hours under proper guard. In passing through the barrio, no stops shall be made. The animals under quarantine in the infected barrio shall be tied or corraled at least 100 meters distant from either side of the highway.

SEC. 14. Weekly reports—

The Municipal Mayor shall keep a complete record of all the cases of diseases or of deaths among domestic animals within his jurisdiction. A copy of the record shall be furnished the Provincial Governor and the nearest Veterinarian of the Bureau of Animal Industry.

The following data shall be given:

(*a*) Names of barrios where cases or deaths occurred;

(*b*) Number of cases and deaths in each barrio;

(*c*) Number of animals of each species exposed thereto and the total number of each species in the barrio;

(*d*) Behavior of the sick animals;

(*e*) Condition of animals—thin, fairly well fed or well fed;

(*f*) Conspicuous symptoms of the disease, such as fever, loss of appetite, feces normal or tinge with bloody streaks or mucus, redness of the eyes, discharge from the nose or eyes, swelling or discoloration in any part of the body;

(*g*) Average number of days that animals were sick before death occurred;

(*h*) Marks and other identification signs;

(*i*) Names and residence of the owners; and

(*j*) Whether the sick animals are being or have been kept in an isolation corral constructed by the municipality or in individual corrals constructed by the owners of the animals.

SEC. 15. Disposition of carcasses—

Owners or caretakers of animals found dead of any of the dangerous communicable animal diseases or of undiagnosed or unknown disease shall report the same to the proper authorities who shall cause the carcasses to be burned or interred properly in a hole of not less than two meters deep and thoroughly covered with earth. The person participating in burying the carcass as well as all the tools used therein shall be properly disinfected. To prevent exposure of the buried carcasses, stones or other heavy materials shall be filed over the grave. The burial of the carcasses of animals or any undiagnosed or unknown disease shall be witnessed by a livestock inspector, meat inspector, policeman, or the barrio lieutenant to see to it that the disposal is in accordance with the requirement of this section.

SEC. 16. Use of the skin, horns and other parts of deceased animals prohibited—

It shall be unlawful for any person to open or cut carcasses, remove the skin, horns and other parts of the body of any animal which had died of any undiagnosed or unknown disease or any of the dangerous communicable animal diseases, especially rinderpest, foot-and-mouth disease, anthrax, hemorrhagic septicemia, hog cholera, etc., except the blood, spleen, ears or other portions that may be taken by a veterinarian for diagnostic and experimental purposes, provided that the removal of such materials shall be effected with all the necessary precautionary measures. Any officer of the law, including the veterinarians, livestock inspectors and meat inspectors of the Bureau of Animal Industry are hereby empowered to seize and destroy such skin, horns or other portions of the animals known to have died of any of the dangerous communicable or unknown or undiagnosed diseases for proper disposal.

SEC. 17. Unlawful traffic—

It shall be unlawful for any person to use or allowed to be used for human consumption any animal or part thereof which have died of dangerous communicable disease or any unknown or undiagnosed disease; or to sell or offer for sale, ship, transport or export the skins, horns and other portions of animals that died of dangerous communicable disease or of any unknown or undiagnosed diseases; nor throw away or dispose of the whole carcass or parts thereof in any place except in accordance with the provisions of this Order.

SEC. 18. Termination of quarantine—

The quarantine of a barrio shall be terminated 30 days after the discovery of the last case. The official lifting of quarantine shall be announced in writing by the veterinarian in-charge upon authorization by the Director of Animal Industry.

The lifting of the quarantine order for rinderpest or foot-and-mouth disease and other dangerous communicable diseases in any infected place shall be issued by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Animal Industry three or more months after the last case.

SEC. 19. Marking or branding of animals found affected with glanders, tuberculosis and contagious abortion (Brucellosis)—

The owner or caretaker of any animal found reactor to or affected with glanders, tuberculosis and contagious abortion (Bang's disease) by biological tests (Mallein, Tuberculin and Agglutination) shall allow or permit any authorized representative of the Director of Animal Industry to mark, brand or tag the said animals on the forehead with the letter G for glanders, TB for tuberculosis and B for Brucellosis or contagious abortion. It shall be unlawful for any person to refuse, prevent, or obstruct the branding, marking or tagging or remove or blur any such brand or mark or remove the identification tag placed by the examining veterinarian as provided herein until the said animal so marked has been disposed of as prescribed in this Order.

If for some reasons or other, the animals found affected with or reactors to said diseases are not disposed of as required by the veterinarian in-charge, all the exposed animals therein including the premises shall be declared under quarantine until the owner, manager, proprietor or caretaker complies with the proper disposition of the same. The owner or caretaker of the animals shall furnish suitable feed and water during their confinement in the quarantine corral. During the period of quarantine, no milking shall be allowed unless the milk is forthwith properly pasteurized under the supervision of the veterinarian.

SEC. 20. The interprovincial movement of large and small animals whenever a city, municipality, municipal district, province or island is declared under quarantine by the Secretary of Agriculture and Natural Resources—

The interprovincial movement of large and small animals like carabaos, buffaloes, horses, sheep and goats, swine and dogs from one province to another shall be under the supervision and control of the Director of Animal Industry or his representatives under the authority imposed by law regarding the suppresion of communicable diseases.

(1) No person shall transport or ship from one province to another any horse, mule, ass, carabao, cattle, buffalo, sheep, goat, swine, dog, deer and circus pet animals unless same is provided with the following requisites:

(*a*) A health certificate and a recent immunization paper showing that same was recently vaccinated against the prevailing disease in the province of origin.

(*b*) That they are free from any dangerous communicable animal disease and have come from a place free from any livestock disease.

(*c*) That they are no longer fit for work or breeding purposes if intended for slaughter.

(*d*) Veterinary permit shall be issued by a representative of the Director of Animal Industry duly authorized in writing to do so.

It shall be unlawful for any person or carrier by any conveyance to move, transfer, ship, bring or drive into the province, city or municipality any livestock for any purpose, except in compliance with the rules and regulations herein provided.

It shall be the duty of every transportation company carrying livestock to cause every car, boat, truck or other means of transportation used in transporting them, to be cleaned and disinfected at its expense by removing all the litter, manure, refuse from such conveyance after unloading animals.

In case of dairy and breeding animals, shipping permit shall be given only after they have been subjected to tuberculin and contagious abortion tests and were found negative and not exposed to the disease. In case of hog for fattening and breeding purposes, they should be immunized against hog cholera before shipment. Dogs for shipment shall be vaccinated against rabies if not vaccinated within six months before the transfer.

Reactors and those intended for immediate slaughter a specific slaughterhouse may be given the permit without the other requisites provided that they are found apparently free from any other dangerous communicable animal disease.

SEC. 21. Disposition of reactors, procedure of control regarding dangerous communicable animal diseases infectious or transmissible to human being—

Person or persons who maintain dairy animals like cows, carabaos, buffaloes and goats, the milk of which is sold to the public; those who maintain commercial or semi-commercial piggery and those maintaining livery of horses for rigs or race track, shall submit their animals to tuberculin, brucellosis and mallein tests, respectively, once ordered by the Director of Animal Industry. The tests shall be performed by an authorized representative of the Bureau of Animal Industry under such standard and method prescribed by the Director of Animal Industry.

The result of the examination or test shall be furnished in writing to the owner or his agent. When reactor or suspect is found, the herd or flock from which they come shall be placed under

quarantine. All the reactors shall be branded or marked TB, B, G, as the case may be or be properly identified by other means and separated from the rest of the herd until disposed of accordingly. All the suspects shall be isolated in another place apart from the negatives. Retest of the suspects and negatives shall be made from time to time until all the positive cases are eliminated from the herd by slaughter or destruction.

SEC. 22. For positive cases of glanders—

(*a*) All horses, mules, or asses found positive by mallein test using intrapalpebral or ocular methods should be condemned and destroyed within 48 hours after the animals have been declared reactors by a veterinarian.

(*b*) The carcass should be burned or buried under a meter or more of earth.

(*c*) The feed trough and all the equipment as well as the premises or stable used for the said reactors should be thoroughly disinfected under the supervision of an authorized representative of the Director of Animal Industry.

(*d*) The rest of the horses in the stable if any should be subjected to re-test after 3 months.

(*e*) It shall be the duty of the owner or caretaker of the horses in the said stable, to report to the Director of Animal Industry any transfer of said horses to other places so that the animals can be re-inspected in the new location.

SEC. 23. In case of reactors to brucellosis in cattle—

The Director of Animal Industry or his representative may allow the slaughter of positive animals in a slaughterhouse where a regular meat inspection system is maintained, thereby eliminating the continuous source of infection. If for some reason or another, the owner thereof does not agree to slaughter the reactors, the following measures should be adopted:

(*a*) Reactors should be segregated in an isolated section of the farm observing all sanitary and hygienic measures.

(*b*) The farm and the animals therein shall be placed under quarantine until such time as may be determined by the Director of Animal Industry or his representative. No animal shall be permitted to be transferred except vaccinates of three or more years of age which may be reactors and those that did not react during the period of quarantine.

(*c*) Compulsory vaccination of calves from four to eight months old using *Brucella abortus* strain 19 vaccine.

(*d*) All calves vaccinated should be tagged, tatooed or branded by either hot iron or chemical brand. The brand should be placed on the right side on the upper portion of the neck just below the nuccal crest. Example: VB–1–4, meaning "Vaccinated for brucellosis in January, 1954."

(*e*) No milk coming from Brucellosis infected farm shall be sold, given or distributed for food unless pasteurized in a regularly authorized establishment supervised by a veterinarian or health authorities.

(*f*) All bulls found positive for brucellosis should be sent to the slaughterhouse for slaughter within 5 days from the report of the test. Bulls found to be reactors should immediately be isolated and never used for breeding purposes anymore.

(*g*) The reactors should be retested 30 days after to determine the condition of the case as to whether the titter is increasing or deminishing.

SEC. 24. In case of Brucellosis reactors in swine—

All hogs found positive for swine brucellosis should be slaughtered within 5 days after the report has been received by the owner.

SEC. 25. In case of tuberculosis-infected—

(*a*) All animals found positive in tuberculin test, using either the intradermal or subcutaneous methods should be branded with the letters TB and should be sent to the slaughterhouse within 5 days after the animal has been declared positive and the owner notified in writing.

(*b*) In the meantime the positive animal should be confined in a stall separated from the rest of the herd.

(*c*) The reactor should be sent to a slaughterhouse where regular meat inspection is performed.

(*d*) It shall be unlawful for any person to transfer reactor cattle to any other place except to the slaughterhouse, without the proper authority of the Director of Animal Industry or his agent.

(*e*) When a reactor dies in the farm, the Bureau of Animal Industry authorities should be notified immediately.

(*f*) Cows in advanced stage of pregnancy at or about 60 days before delivery, may be retained until 10 days after delivery but the particular cow should be closely confined and segregated from the rest of the herd.

(*g*) Suspects should be retested 60 days after the first test.

SEC. 26. Injection of animals with vaccine, serum, virulent blood and other biological products as in rinderpest, foot-and-mouth disease, anthrax, hemorrhagic septicemia, hog cholera, avian pest and other dangerous communicable diseases—

Whenever the Director of Animal Industry or his duly authorized representative deems it necessary to have the carabaos, buffaloes, horses, sheep, goats, swine and poultry in any municipality or farms vaccinated, tested or treated against any prevailing disease as a preventive and control measure or as prophylactic treatment, the Provincial Governor of the province concerne dupon being served by the Director of Animal Industry

or his agent with a written notice to the effect that a general vaccination, test or treatment of all animals affected by the existing disease will be performed in a given municipality indicating particularly the barrios or sitios or places, the date of vaccination, treatment or test, shall direct the mayors concerned to take such steps as are necessary to facilitate the vaccination, test or treatment required under the circumstance.

In case of big haciendas, dairy farms, farm schools and colleges and other livestock farms, the owner, manager, director, president or head of the same shall, upon being notified in writing by the Director of Animal Industry or his agent the date, place of test, treatment or vaccination against the prevailing animal disease, cooperate fully to facilitate the vaccination, test or treatment necessary under the circumstance.

The veterinarian-in-charge, after having received the order of the Director for mass vaccination, treatment or test, shall advise in writing the Provincial Governor and the Mayor concerned about the necessity of the test, vaccination, or treatment and fix the program of vaccination, treatment or test, copies of which should be furnished the Director of Animal Industry.

The Mayor shall then communicate the vaccination program to the barrio lieutenant concerned who shall notify all animal owners in his barrio to present their animal for vaccination on the date and place designated. The Mayor shall cause to be constructed such stock, chute, or sheds necessary in the vaccination work before this vaccination takes place.

SEC. 27. Prosecution and penalties—

Any person who shall contravene or violate any of the provisions of this Administrative Order or who shall obstruct or impede or assist in obstructing or impeding the Director of Animal Industry or his duly authorized representatives, the Provincial Governor, City or Municipal Mayor, the Municipal Policeman and P. C. soldiers, meat inspectors in the execution of any of the provisions of this Order, or who shall forge, counterfeit, alter or destroy or remove any certificate, pass, tag or any legal paper issued by virtue of the provisions of this Order, or who shall alter or blur the brand, or tatoo made on reactors or who voluntarily remove the identification, tag or tatoo made thereat by a representative of the Director of Animal Industry, or who shall fail to present his animal or animals for vaccination, test or treatment on the date and place designated in the program announced under section 26 of this Order, shall be liable to prosecution and upon conviction, shall for each offense, be punished by a fine of not more than ₱100 or by imprisonment of not more than 30 days or both such fine and imprisonment in the discretion of the court.

SEC. 28. Repealing Provisions and Effectivity—

Repealing of provisions.—All Orders, rules and regulations inconsistent with the provisions of this Order are hereby repealed.

Date of Effectivity.—This Administrative Order shall take effect on——————.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

MANUEL D. SUMULONG
Director of Animal Industry

BUREAU OF FORESTRY

FORESTRY ADMINISTRATIVE ORDER NO. 4–5

June 28, 1954

AMENDMENTS TO FORESTRY ADMINISTRATIVE ORDER NO. 8–3, KNOWN AS THE REVISED REGULATIONS GOVERNING SPECIAL USES OF FOREST LANDS AS AMENDED BY FORESTRY ADMINISTRATIVE ORDERS NOS. 4, 4–1, 4–2 AND 4–3.

1. Section 3 of Forestry Administrative Order No. 8–3 of July 1, 1941, known as Revised Regulations Governing Special Uses of Forest Lands, as amended by Forestry Administrative Order No. 4–3, is hereby further amended to read as follows:

"3. *Schedule of fees; rentals and area.*—Except as hereinafter provided, the forestry fees, rentals and maximum area for each kind of special uses of forest lands shall be as follows:

Kinds	Forestry fee (*a*) for each application	Rental (*y*) per hectare or fraction	Maximum area in hectares
Bathing establishment	₱5.00	₱5.00	24
Hotel site	5.00	5.00	24
Nipa and/or other palms and bacauan plantation	5.00	3.00	200
Private Camp or residence	2.00	2.00	24
Right-of-way	5.00	2.00	200 (*x*)
Saltworks	5.00	5.00	200 (*x*)
Sanatorium	5.00	5.00	24
Sawmill site	5.00	5.00	24
Lumber yard	5.00	5.00	24
Timber depot	5.00	5.00	24
Logging camp site	5.00	5.00	24
Log pond	5.00	5.00	24
Kaiñgin	1.00	1.00	1
Lime and charcoal kiln	2.00	5.00	24
Pasture	(*b*)	0.60	2,000
Plantation of medicinal plants or trees of economic value	(*b*)	0.60	2,000 (*x*)
Other (uses) lawful purposes	2.00	2.00	24
Miscellaneous—Vegetables Garden (Mountain Province)	5.00	100.00 or ₱0.01 (*z*) per sq. m.	

N. B.—(*a*) Payable only to the Director of Forestry Manila.
(*b*) Five pesos for every 500 hectares or fraction thereof.
(*x*) Republic Act No. 121, June 14, 1947.
(*y*) May be paid to the Municipal Treasurer.
(*z*) Computation of rental shall be on per square meters basis but minimum rental shall not be less than P2.

2. Section 9 (*b*) of said Forestry Administrative Order No. 8–3 is hereby amended to read as follows:

"(*b*) A lease agreement shall run for a period of not more than twenty-five years. At the expiration of this term of twenty-five years, if in the opinion of the Secretary of Agriculture and Natural Resources, the conditions of the area or public interests so require, or the lessee shall have made important improvements on the premises, the lease may be renewed for another period of twenty-five years. The combined period of the original lease including renewal shall not exceed fifty years."

3. Section 26, of the same Forestry Administrative Order No. 8–3, is hereby amended, by inserting paragraphs (*g*) and (*h*) immediately after paragraph (*f*) (3) as follows:

"(*g*) Miscellaneous—Vegetable Garden (Mountain Province):

(1) *Areas under permits.*—Only areas actually planted to vegetables along the Mt. Trail from Baguio up to and including Mt. Data National Park, Benguet, Mountain Province, shall be covered by this kind of permit.

(2) Actual occupants who are qualified to hold special use permits under this Order are hereby required to apply for and shall be issued special use permits, and to pay the necessary fees and rentals therefor.

(3) The permittee shall be required to terrace the area under permit, provided that portion thereof needed for protection of sources of water supply must be planted to trees by the permittee.

(4) No new clearing shall be allowed. Any maker of new clearing or *kaiñgin* shall be strictly dealt with according to law.

(5) *Precaution against fire.*—Precaution shall be taken by the permittee to prevent the occurrence of forest fires that may cause damage to the adjoining forest. In case of fire outbreak in the vicinity of the area permit, the permittee, including his agents and laborers, shall be called upon by the Director of Forestry or his duly authorized representative to help suppress and control such fire."

"(*h*) Plantation of medicinal plants or trees of economic value:

(1) *Species for planting.*—Only medicinal plants or trees of economic value shall be planted in the area under permit or lease. When public interests so demand, the Director of Forestry or the Secretary of Agriculture and Natural Resources may prescribe the forest tree species or any tree species that shall be planted by the permittee or lessee.

(2) *Products gathered from plantation exempt from forest charges.* Medical plants or trees, including products therefrom, planted by the permittee or lessee may be gathered, cut, collected and removed free of forest charges, provided that same are invoiced and manifested in the same manner as forest products cut under a gratuitous permit.

(3) *Barren areas planted to forest trees.*—On the discretion of the Secretary of Agriculture and Natural Resources, rentals of barren land occupied under this permit may be waived: *Provided,* That the land under permit is planted to forest trees: *Provided, further,* That forest charges on the trees so planted are paid to the government at the time the same are cut, collected and removed for sale by the permittee: and, *Provided, finally,* That the government may provide technical assistance in the planting and harvesting of trees planted under this permit.

(4) *Merchantable trees cut.*—The permittee or lessee shall pay the corresponding regular forest charges to the municipal treasurer concerned on all existing merchantable trees as may be out in the course of the development of the plantation.

(5) *Right-of-way for timber outlet.*—The Director of Forestry or the Secretary of Agriculture and Natural Resources reserves the right to permit, when public interests so demand, the opening of such portions of the area under permit or lease as may reasonably be required for timber outlet.

(6) *Areas not open for permit or lease.*—Areas designated by the Director of Forestry for lumber or timber production purposes shall not be open for permit or lease."

4. *Date of taking effect.*—This Order shall take effect on July 1, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

FELEPE R. AMOS
Director of Forestry

FORESTRY ADMINISTRATIVE ORDER NO. 21

September 18, 1954

PROHIBITION AGAINST TRANSFER, SALE, CONVEYANCE, OR TRANSACTION, UNDER ANY GUISE OF ANY FORESTRY LICENSE, PERMIT OR LEASE.

1. Pursuant to the provisions of sections 79 (B) and 1817 of the Revised Administrative Code, the following regulations are hereby promulgated:

The transfer, sale or conveyance of any license, permit or lease issued by the Director of Forestry, now or hereafter authorized under the forest laws, rules and regulations in favor of any individual, companies or private corporations within the period of three years after the issuance of such license, permit or lease, or any transaction under any guise which will allow or permit others to enjoy the privilege granted therein, is hereby prohibited.

After the period of three years from the issuance of the license, permit or lease, the licensee, permittee or lessee may, with the approval of the Secretary of Agriculture and Natural Resources, be allowed to transfer, sell or convey his license, permit or lease in favor of qualified persons, companies or corporations, provided that the licensee, permittee or lessee has fully complied with all the requirements of the law and the rules and regulations thereunder promulgated by the Director of Forestry; and provided further, that there is no evidence that such transfer, sale or conveyance is being made for purposes of speculation.

Any violation of the foregoing provisions shall be sufficient cause for the cancellation of the license, permit or lease involved in the transaction and the forfeiture of any and all bonds executed thereunder.

2. This order shall take effect immediately.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

FELEPE R. AMOS
Director of Forestry

FORESTRY ADMINISTRATIVE ORDER NO. 22

October 12, 1954

AMENDMENTS TO FORESTRY ADMINISTRATIVE ORDER NO. 11, KNOWN AS THE LICENSE REGULATIONS, AS AMENDED.

1. In conformity with the recommendations approved in the First Philippine Forest Conservation and Reforestation Conference held in Manila on September 30 and October 1, 1954, paragraph (*s*) of section 34 of Forestry Administrative Order No. 11, known as the License Regulations is hereby amended to read as follows:

(4) Holders of ordinary timber licenses covering a forest area of 1,000 hectares or more shall be required to employ Forest Guards as follows:

1,000 to 5,000 hectares	1 Forest Guard
Over 5,000 to 10,000 hectares	2 Forest Guards
Over 10,000 hectares	2 Forest Guards

plus 1 Forest Guard for any additional 10,000 hectares and fraction thereof, if necessary, at the discretion of the Director of Forestry.

The salaries and/or wages of Forest Guards under this section shall be in accordance with existing laws and regulations and the same shall be borne by the licensee concerned.

Forest Guards employed by holders of timber licenses, as herein provided, shall be appointed and deputized as Forest Officers by the Director of Forestry. They shall be under the direct supervision of the Director of Forestry or his authorized representative. The main duties of every Forest Guard shall be to patrol the area covered by the license; apprehend illegal cutting and removal of forest products, illegal *kaiñgineros;* help put out forest and/or grass fire within the license area or its vicinity; and perform such other activities relative to the enforcement of Forest and Internal Revenue Laws and Regulations and in the protection and conservation of forest resources.

2. *Date of taking effect.*—This Order shall take effect upon its approval.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

FELEPE R. AMOS
Director of Forestry

BUREAU OF LANDS

LANDS ADMINISTRATIVE ORDER NO. 18

October 21, 1954

PROHIBITING CLOSING OF STREAMS IN AREAS IN THE MANILA BAY FISHPOND PROJECT.

For the purpose of avoiding floods or similar calamities due to curtailed flow of streams, every disposition that may be made by the Director of Lands of lands coming under his jurisdiction in the vicinity of, or within, the Manila Bay Fishpond Project, shall be subject to the condition that no waterways shall be closed, or streams and other bodies of water interfered with; and that the grant shall conform to drainage canals provided therein.

This Order shall take effect upon approval.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

ZOILO CASTRILLO
Director of Lands

BUREAU OF FISHERIES

FISHERIES ADMINISTRATIVE ORDER NO. 13-2

June 10, 1954

AMENDING SECTION 2 OF FISHERIES (FISH AND GAME) ADMINISTRATIVE ORDER NO. 13 OF JULY 1, 1939, AS AMENDED.

1. Section 2 of Fisheries (Fish and Game) Administrative Order No. 13, s. 1939, as amended, is hereby further amended to read as follows:

"2. *Prohibition.*—It shall be unlawful for any person, association or corporation to kill or catch, or cause to be killed or caught or taken from those waters, purchase, sell, offer or expose for sale or have in his possession or under his control, any sexually mature sardines or herrings, or their larvæ, fry or young known as siliniasi or lupoy, during the close season, from November 15 to March 15, inclusive of every year, in that portion of the Visayan Sea and adjoining waters enclosed by the Southern coast of Masbate and the northern coasts of Capiz, Iloilo and Occidental Negros, and also by lines connecting the following points: Beginning from the municipality of Milagros, Masbate, running due southeast and along the coastline to the southernmost point of the municipality of Placer, same province; thence to Cuto Island, thence to southeastern tip of Bantayan Island, Cebu; thence to the mouth of Davao River, northeast of Occidental Negros; thence westward along the coastline to Toronton Point; thence westward to the mouth of Talisay River, Eastern Panay; thence northward along the shoreline to Bulacaue Point; thence westward along the shoreline to Pirara Point; thence northeast to Palandula Point, Masbate, and thence northeast along the coastline to Milagros, the point of beginning."

2. This Fisheries Administrative Order shall take effect on November 15, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

D. V. VILLADOLID
Director of Fisheries

Approved, September 13, 1954.

By authority of the President:

FRED RUIZ CASTRO
Executive Secretary

Department of Public Works and Communications

DEPARTMENT ORDER NO. 28
Series of 1954

September 11, 1954

AMENDING SECTIONS 2, 5, 8, 21 AND 26, DEPARTMENT ORDER NO. 5, SERIES OF 1948 OF THE DEPARTMENT OF COMMERCE AND INDUSTRY.

SECTION 1. Section 2 of Department Order No. 5, Series of 1948, of the Department of Commerce and Industry is hereby amended by adding a new paragraph (*c*) after sub-paragraph (3), paragraph (*b*) to read as follows:

(*c*) RADIOTELETYPE OPERATOR LICENSE

SEC. 2. Paragraph (*e*) of section 5 of Department Order No. 5, series of 1948 of the Department of Commerce and Industry is hereby amended to read as follows:

(*e*) He must have graduated from a radio school recognized and accredited by the Secretary of Public Works and Communications or must have had at least one year service as a government radio operator; *Provided, however,* That applicants for radioteletype operator license shall be exempted from the requirement of this paragraph.

SEC. 3. Section 8 of the same Department Order is hereby amended by inserting a new paragraph (*g*) after sub-paragraph (3) of paragraph (*f*) to read as follows:

(*g*) RADIOTELETYPE OPERATOR LICENSE

(1) Ability to transmit and receive messages by radioteletype.
(2) Written examination element 1 (basic law).

SEC. 4. Section 21 of the same Department Order is hereby amended by inserting a new paragraph (*g*) after paragraph (*f*) to read as follows:

(*g*) RADIOTELETYPE OPERATOR LICENSE

To operate printers of radioteletype stations.

SEC. 5. Section 26 of the same Department Order is hereby amended by adding sub-paragraph (5) to paragraph (*a*) to read as follows:

(5) Radioteletype ..... ₱3.00

and by inserting sub-paragraph (4-*a*) between sub-paragraphs (4) and (5) of paragraph (*b*) to read as follows:

(4-*a*) RADIOTELETYPE OPERATOR LICENSE

For one year ..... ₱3.00

SEC. 6. This Department Order shall take effect upon its approval.

Approved, September 24, 1954.

VICENTE OROSA
Acting Secretary

BUREAU OF POSTS

ADMINISTRATIVE ORDER No. 9

November 1, 1954

NEW ASSIGNMENTS OF OFFICIALS AND FUNCTIONS IN THE CENTRAL OFFICE

The following assignments of officials and functions in the Central Office are hereby made to take effect November 1, 1954:

1. Mr. Jesus Alvarez as Acting Officer-in-Charge of the Manila Post Office, in which capacity he shall take charge of the Manila Post Office and supervise and coordinate the work in the Domestic Mail Division, Foreign Mails Division, City Delivery Division, and Miscellaneous Service Division. Correspondence and forms heretofore prepared in all said Divisions for or in the name of the Director or as Postmaster for Manila shall hereafter be prepared for or in the name of Mr. Alvarez as Acting Officer-in-Charge and those for the signature of the Director shall be passed upon by him (the Officer-in-Charge) and the Assistant Director.

2. Mr. Jose Timbol as Acting Chief of the Stamp and Philatelic Division.

3. Mr. Jose Cruz as Acting Supervising Post Office Inspector with official station in Manila.

4. Mr. Mauricio A. Soriano as Acting Chief of the Cash and Money Order Division, vice Post Office Inspector Godofredo Señires, who is hereby reassigned to the Inspection Division.

5. Mr. Manuel J. Romero as Acting Chief of the Inspection Division.

6. Mr. Anastacio Morales as Acting Chief of the Miscellaneous Service Division, vice Post Office Inspector Silvestre Santos who is hereby reassigned to the Inspection Division.

7. Mr. Pedro de la Paz as Acting Chief of the Property Division.

8. Mr. Jesus Garcia as Chairman of the Property Inventory Committee, vice Post Office Inspector Ciriaco Reyes who will assist Mr. Garcia in the inventory work until further order.

9. Mr. Mariano Fajardo as Acting Chief of the Records Division.

10. Mr. Francisco Villa as Acting Assistant Chief of the Administrative Division.

All officials concerned shall assume their new assignments effective November 1, 1954, and make arrangements for the early completion of the transfer of their property and other accountabilities, if any, submitting reports thereof.

F. CUADERNO
Acting Director

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

BUREAU OF TELECOMMUNICATIONS

ADMINISTRATIVE ORDER No. 20

September 22, 1954

NOMINAL RATE OF ₱0.30 ON MESSAGES RELATING TO THE INSTALLATION, CONSTRUCTION AND OPERATION OF IRRIGATION PUMPS.

In line with the Rural Economic Development Program of the government, official telegrams of the Irrigation Service Unit, under the Department of Public Works and Communications, filed by authorized officials of the said Unit concerning the installation, construction and operation of irrigation pumps, shall, as a temporary measure, be accepted at the rate of ₱0.30 per message, subject to the following conditions:

(1) That each of such telegrams shall contain not more than 30 words in length, and that in case the message contains more than 30 words, every word in excess of 30 shall be charged for at the arte of ₱0.15 per word;

(2) That only two telegrams of this nature can be filed daily at the nominal rate of ₱0.30 from one telegraph office to another, and that telegrams that may be filed in excess of the two telegrams herein allowed shall be treated as full-rate telegrams and shall, therefore, be charged accordingly;

(3) That such telegrams shall deal exclusively on matters concerning the installation, construction and operation of irrigation pumps and shall be framed in the fewest words possible;

(4) That each of such telegrams shall be filed in duplicate in order to facilitate the submission of bills to the Irrigation Service Unit, Department of Public Works and Communications;

(5) That each of such telegrams shall carry the indicator "IRRIGATION" before the address and included in the count of chargeable words;

(6) That each of such telegrams shall be endorsed "O. B. CHARGEABLE TO ACCOUNT, IRRIGATION SERVICE UNIT" followed by the signature of the official authorized to file the same;

(7) That a monthly statement of account shall be prepared by the Accounting Officer of the Bureau of Telecommunications and transmitted to the Irrigation Service Unit for settlement; and

(8) That this arrangement is only temporary in nature and shall be discontinued whenever full-rate telegrams are being delayed through congestion of traffic.

F. CUADERNO
Director of Telecommunications

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

ADMINISTRATIVE ORDER NO. 21

September 30, 1954

NOMINAL RATE OF ₱0.20 ON TELEGRAMS FILED BY OR IN BEHALF OF DEPARTMENT SECRETARIES AND/OR UNDERSECRETARIES OR OFFICIALS OF SIMILAR RANK IN THE COURSE OF INSPECTION TRIPS IN THE PROVINCES.

Effective immediately, telegrams filed by Department Secretaries and/or Undersecretaries or officials of similar rank in the course of their inspection trips in the provinces shall, as a temporary measure, be accepted at the rate of ₱0.20 per message, irrespective of length and destination within the country, subject to the following conditions:

(1) That such telegrams shall deal exclusively on matters, official in nature, connected with the inspection trips of the Department Secretary and/or Undersecretary or official of similar rank;

(2) That such telegrams shall be filed in duplicate in order to facilitate the submission of bills to the office of the official concerned;

(3) That such telegrams shall carry the indicator "INSPECTION" before the address and included in the count of chargeable words;

(4) That such telegrams shall be endorsed "O. B. CHARGEABLE TO ACCOUNT, (name of dept, or office))" followed by the signature of the Department Secretary and/or Undersecretary or official of similar rank or by his duly authorized representative;

(5) That a monthly statement of account shall be prepared by the Accounting Officer of the Bureau of Telecommunications and transmitted to the Department or Office concerned for settlement; and

(6) That this arrangement is only temporary in nature and shall be discontinued whenever full-rate telegrams are being delayed through congestion of traffic.

F. CUADERNO
Director of Telecommunications

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

ADMINISTRATIVE ORDER NO. 22

October 9, 1954

NOMINAL RATE OF ₱0.20 ON MESSAGES RELATING TO FOOD SUPPLY SITUATION IN THE PROVINCES.

Effective at once, official telegrams that may be filed by authorized officials of the Division of Agricultural Economics, Department of Agriculture and Natural Resources, and their agents or representatives in the provinces, concerning the food supply situation in a given locality, shall, as a temporary measure, be accepted at the rate of ₱0.20 per message, irrespective of length, subject to the following conditions:

(1) That such telegrams shall deal exclusively on matters concerning informations relative to the food supply situation in the country which the Division of Agricultural Economics may send or solicit from possible sources of such informations;

(2) That "agents or representatives" aforementioned include field men of the Bureau of Agricultural Extension, district agriculturists, city agriculturists, provincial agriculturists, municipal agriculturists, home demonstrators and district 4-H club leaders, leading municipal officials like the mayor and municipal treasurer, district supervising teachers, head teachers or municipalities and large barrios, provincial officials like the governor and provincial treasurer, field men of the Bureau of Commerce, and leaders of civic organizations and provincial and municipal agricultural councils;

(3) That such telegrams shall be framed in the fewest words possible;

(4) That such telegrams shall be filed in duplicate in order to facilitate the submission of bills to the Division of Agricultural Economics, Department of Agriculture and Natural Resources;

(5) That such telegrams shall carry the indicator "DAE" before the address and included in the count of chargeable words;

(6) That such telegrams shall be endorsed "O. B. CHARGEABLE TO ACCOUNT, DIVISION OF AGRICULTURAL ECONOMICS" followed by the signature of the official or agent or representative authorized to file the same;

(7) That a monthly statement of account shall be prepared by the Accounting Officer of the Bu-

reau of Telecommunications and transmitted to the Division of Agricultural Economics for settlement; and

(8) That this arrangement is only temporary in nature and shall be discontinued whenever full-rate telegrams are being delayed through congestion of traffic.

F. CUADERNO
Director of Telecommunications

Approved:

VICENTE OROSA
Acting Secretary of Public Works and Communications

CIRCULAR-LETTER

October 23, 1954

To all Telegraph and Radio Stations:

For the satisfaction of our provincial employees, we are hereby informing them that all possible means are being taken in the central office to expedite processing of their claims for overtime.

The clerks in the Accounting Office assigned to verify overtime claims are putting in extra time so as to avoid delay in their disposal. The unit in the General Auditing Office handling these claims is doing the same and there is no delay in countersigning treasury warrants in payment of overtime.

Intermediaries are not entertained in this office, nor in the Accounting Office, nor in the General Auditing Office. Provincial employees are cautioned not to believe any one who might inform them that he has worked for the prompt approval of their claims, and are advised not to give or send tips to any alleged "fixer".

In this connection, attention is invited to Office Order No. 6 dated April 28, 1953, which reads as follows:

> "Information has been received that in certain offices, before a treasury warrant covering salary differential, overtime pay, etc., is delivered to the payee, a tip is asked by the clerk or employee in charge of delivering the warrant. Such practice, which undoubtedly is not known by the Chief of the office, is illegal and must be stopped.
>
> "An employee must not give anything for receiving his treasury warrant, and if the one making the delivery asks for a tip, he should be reported to this Office. The report will be treated strictly confidential, and the name of the employee making the report will not be divulged.
>
> "Copies of this order must be read and initialed by all the Telecommunication personnel before it is filed."

F. CUADERNO
Director of Telecommunications

CIRCULAR NO. 9

November 1, 1954

"CHARGE" TELEGRAMS OF HOLDERS OF CREDIT CARDS ISSUED BY WORLD TRAVELERS GUARANTEED BY THE GLOBE WIRELESS LTD., MANILA—ACCEPTANCE OF.

The arrangement made between this Office and the Globe Wireless Ltd., Manila, to allow Holders of Credit Cards issued by the World Travelers to file telegrams in any telegraph and radio stations of the Bureau of Telecommunications, without actual prepayment of tolls thereon, having been approved by the General Auditing Office, telegrams that may be filed by Holders of such credit cards may be accepted as "charge" subject to the following conditions:

1. That the bonafide holder of credit card issued by the Globe Wireless Ltd., in San Francisco, California, shall be properly identified by the official concerned;

2. That upon presentation of the credit card by the holder thereof, the Bureau of Telecommunications will issue in turn a special credential for identification purposes, such credential may be presented in any of the telecommunication stations of this Bureau and tolls on any message that may be filed will not be collected at the time of filing, as special arrangement;

3. That each of such telegram shall be filed in duplicate to facilitate the submission of Statement of Account at the end of each month;

4. That each of such telegram shall be endorsed at the lower left-hand corner "CHARGEABLE TO THE ACCOUNT OF THE GLOBE WIRELESS LTD., MANILA" followed by the signature of the sender of the telegram;

5. That the tolls on telegrams that may be filed by the bonafide holders of the credit cards shall be paid by the Globe Wireless Ltd. in Manila and that a separate Statement of Account shall be prepared by the Accounting Officer for this Bureau at the end of each month; and

6. That, in view of the requirements of the General Auditing Office, such account shall be paid within 5 days from receipt of the Statement of Account.

In this connection, attention is invited to the provisions of Circular No. 6 dated September 23, 1954, requiring the submission of all "charge" tele-

grams every 15th day and end of each month to the Accounting Officer, Bureau of Telecommunications, Manila.

J. S. ALFONSO
Acting Director

MEMORANDUM

November 2, 1954

For all Radio, Telegraph, Telegraph-Telephone and Telephone Offices, Bureau of Telecommunications:

There is reproduced hereunder pertinent portion of Republic Act No. 993, recreating the municipalities of Legaspi and Daraga in the province of Albay:

"SECTION 1. The municipality of Legaspi and the municipality of Daraga, as constituted before the creation of the City of Legaspi, are hereby recreated as municipalities in the province of Albay."

Please delete Legaspi from the list of cities and insert it in the list of telegraph offices in the province of Albay.

J. S. ALFONSO
Acting Director

CIRCULAR
(Unnumbered)

November 11, 1954

LOSS OF TREASURY WARRANTS NUMBERS 2990698 AND 696537

The loss of the following treasury warrants has been reported by the Accounting Officer for the Bureau of Telecommunications:

Treasury Warrant No. 2990698 for ₱84.30 dated July 23, 1953 in favor of General Shipping Co., Inc.

Treasury Warrant No. 696537 for ₱95.00 dated July 31, 1950 in favor of Mr. A. Bagtas, former messenger at Malabon, Rizal.

Chief Operators, Operators-in-Charge and others concerned shall take note of the lost treasury warrants and see to it that they will not be accepted in their transactions under any circumstances. Any government official or employee who finds them in the possession of any person is requested to notify this Office immediately.

J. S. ALFONSO
Acting Director of Telecommunications

Department of Commerce and Industry

SECURITIES AND EXCHANGE COMMISSION

RULES AND REGULATIONS GOVERNING THE FILING OF REGISTRATION STATEMENTS OF SECURITIES UNDER REPUBLIC ACT 1143.

Pursuant to the provisions of Republic Act 1143 and Commonwealth Act No. 83, otherwise known as the Securities Act, the following Rules and Regulations governing the filing of new registration statements of securities by corporations and associations whose certificates or permits to sell securities, together with their corresponding registration statements, were lost or destroyed during the last world war, including those issued by the National Treasurer under the Blue Sky Law, are hereby promulgated for the information and guidance of all concerned.

1. *Entities required to file New Registration Statements:*

(*a*) Corporations, whether domestic or foreign, which were granted permits/licenses to sell securities prior to the last world war either by the National Treasurer or by the Securities and Exchange Commissioner, but which permits/licenses or the applications/registration statements which served as the basis for their issuance, were lost or destroyed during the war.

(*b*) Sociedades anonimas, unregistered mining associations, and any other form of association whose permits/licenses to sell securities or the corresponding registration statements, were lost or destroyed in the manner stated in the preceding paragraph.

2. *Documents to be submitted:*

(*a*) The registration statement, in triplicate.

(*b*) A balance sheet, in duplicate, of the issuer as of a date not more than 90 days prior to the date of filing of the Registration Statement of Securities. Among other things, such balance sheet must show:

(1) All assets of the issuer.
(2) Segregation of intangible assets from other assets.
(3) Loans in excess of ₱10,000 to any officer and/or director.
(4) All liabilities of the issuer.
(5) Surplus or deficit of the issuer showing how and from what sources created.

(*c*) A Profit and Loss Statement of the issuer for the last two fiscal years and a Profit and Loss Statement from the end of the last fiscal year up to the

date of the balance sheet submitted, both in duplicate. Among other things, the Profit and Loss Statement must show the following:

(1) All earnings and income and the nature and source of such items.

(2) All expenses and costs (submit schedule of fixed charges).

(3) Differentiation between recurring and non-recurring income.

(4) Differentiation between operating and extraneous income.

All items of significant amounts in the balance sheet and its related profit and loss statement should be supported with detail schedules.

The above-mentioned financial statements must be certified by an independent certified public accountant. Where the auditor is a member of an accounting firm using a firm name, the certificate should be manually signed by a member who is a licensed certified public accountant.

(*d*) Three copies of (1) the last annual report, (2) the prospectus of the issuer or similar literature used in connection with the sale of the securities, if any; (3) the certificate of stock or bond representing the securities being sold.

(*e*) A complete list, in duplicate, signed under oath by the secretary of the issuer, of the existing properties acquired and/or developed by the registrant showing names of mining claims, location of same, names of locators and/or owners, and dates of their location and registration;

(*f*) A certificate from the Director of Forestry showing that the mining properties in question are not located in any forest reservation, communal forest or national park, in duplicate.

(*g*) Two true copies of the agreement or contract between the issuer (corporation or association) and the claim owners, certified to by the secretary of the corporation or association, if there be any.

(*h*) A report, in duplicate, under oath of a duly licensed mining engineer showing the present condition of the mining properties, prospects of further exploitation, and probable life of the mines.

(The requirement in (*e*), (*f*), (*g*) and (*h*) shall be accomplished only if the issuer is a mining corporation or association).

3. *Period of Filing Registration Statement:*

The registration statement shall be filed with the Commission within one year from and after the date of effectivity of these Rules and Regulations. Upon failure to do so, the prior registration of the securities, the permit/license to sell the same, as well as the listing thereof, if any, in the Manila Stock Exchange, shall automatically become null and void.

4. *Filing Fee:*

On filing the registration statement, the registrant shall pay a fee of one-twentieth of one per centum of the total par or issued value of the securties.

5. *Registration Statement Form:*

The registration statement shall be accomplished in quintuplicate, three of which shall be submitted to the Commission and two shall be retained by the registrant, on legal size bond paper, in accordance with S.E.C. Form No. 26.

6. *Issuance of New Permit/License:*

After receipt of the registration statement, the Commission shall conduct necessary examination of the affairs of the issuer, and if, in its opinion, the continued sale of the securties may be allowed under the Securities Act, it shall issue a new permit/license for the purpose, under such terms and conditions as it may consider necessary. Otherwise, the registration and permit/license to sell securities of the issuer shall be revoked/cancelled and declared of no further force and effect.

7. *Effectivity:*

The foregoing Rules and Regulations shall take effect 15 days after their publication in the *Official Gazette*.

Manila, Philippines, October 14, 1954.

MARIANO G. PINEDA
Commissioner

Approved:

OSCAR LEDESMA
Secretary of Commerce and Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

November 1954

Wenceslao Fernan as Judge of the 16th Judicial District to preside over the CFI of Davao and Davao City, Branch III, November 2.

Modesto Ramolete as Judge of the 15th Judicial District to preside over the CFI of Surigao, November 2.

Olegario Lastrilla as Judge of the 13th Judicial District to preside over the CFI of Samar and Calbayog City, Branch III, November 2.

Lorenzo Garlitos as Judge of the 13th Judicial District to preside over the CFI of Leyte, and the cities of Ormoc and Tacloban, Branch II, November 2.

Francisco Carreon as Judge of the 8th Judicial District to preside over the CFI of Laguna and San Pablo City, Branch III, November 2.

Pedro Quinto as Judge of the 1st Judicial District to preside over the CFI of Isabela, Branch II, November 2.

Troadio T. Quiazon, Jr., and Eriberto Ignacio as Solicitors in the Office of the Solicitor General, November 2.

Eugenio Angeles as City Fiscal of Manila, November 2.

Atanacio Ombac as First Assistant City Fiscal of Manila, November 2.

Gregorio Lantin as Second Assistant City Fiscal of Manila, November 2.

Luis Manta as Assistant Provincial Fiscal of Lanao, November 2.

Amante Filler as Clerk of Court of the Court of Tax Appeals, November 2.

Napoleon Altavas as City Engineer of Roxas City, November 5.

Andres Reyes and Jose B. Jimenez as Second Assistant City Fiscals of Manila, November 11.

Roberto Villanueva as Executive Chairman of the National Forestry Council, November 15.

Mrs. Soledad de Jesus as Register of Deeds of Bulacan, November 17.

Pedro Revilla as City Attorney of Quezon City, November 18.

Col. Alfredo M. Santos as Brigadier General in the Armed Forces of the Philippines, November 26.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT MAGSAYSAY'S STATEMENT ON THE DEATH OF REPRESENTATIVES GREGORIO TAN AND LORENZO ZIGA IN A MOTOR ACCIDENT.

I AM SHOCKED by the tragic death of Congressmen Tan and Ziga.

With Congressman Trono, they had come to see me before leaving for a tour of the provinces to look into the state of health services and facilities, particularly in the rural areas, to guide them in future legislation aimed at improving the health of our people. I had told them I looked forward to seeing them again on their return to compare findings and impressions, so that we could more effectively collaborated in this effort.

The sudden death of Congressmen Tan and Ziga deals a heavy blow to this program and fills me personally with a deep sense of loss. I had learned to depend on them for earnest and enthusiastic support in prosecuting our public health program. The only way we can mitigate this loss is by applying ourselves with greater vigor and dedication to the task that remains.

To their bereaved families, I extend my sincerest sympathies, hoping that their grief may be assuaged somewhat by the proud realization that their kin have died in the line of duty and in the service of their people. This is how Congressmen Tan and Ziga will be remembered and honored by their countrymen.

I also wish to express my fervent hopes for the full and speedy recovery of Congressman Trono and the others injured in this terrible accident.

DECISIONS OF THE SUPREME COURT

[No. L-7075. November 18, 1954]

SULPICIO V. CEA, ETC., ET AL., petitioners and appellants, *vs.* CIRIACO M. CINCO ET AL., respondents and appellees

CRIMINAL PROCEDURE; JUDGMENTS; PROMULGATION; PRESENCE OF DEFENDANT NOT NECESSARY IN CASE OF ACQUITTAL.—Under section 6 of Rule 116 of the Rules of Court, a judgment of acquittal is validly promulgated after the clerk of the Court of First Instance has entered it in the criminal docket and the defendant served with copy thereof. The presence of the defendant is not necessary where the judgment is one of acquittal.

APPEAL by certiorari from a decision of the Court of Appeals.

The facts are stated in the opinion of the Supreme Court.

Solicitor General Juan R. Liwag and *Solicitor Meliton G. Soliman* for petitioners and appellants.

Padilla, Carlos & Fernando for the respondents and appellees.

PARÁS, *C. J.:*

The herein respondents, with others, were charged with malversation of public funds in four informations docketed as criminal cases Nos. 3896, 3897, 3898 and 3899 of the Court of First Instance of Leyte. After a joint hearing, during which numerous witnesses were presented both by the prosecution and by the defense, Judge Jose B. Rodriguez rendered a decision dated June 28, 1951, consisting of 152 pages, acquitting all the accused, except Treasurer Francisco Martinez who was found guilty of malversation through negligence and given only one penalty. Judge Rodriguez transmitted his decision from Laoang, Samar, to the clerk of the Court of First Instance of Leyte who, on July 3, 1951, made the following entry in the criminal docket:

"July 3, 1951, Court decided; Francisco Martinez convicted from 8 years 1 day to 16 years, 5 months and 11 days, to suffer perpetual disqualification and to pay ₱653,963.69 and proportionate costs. The rest are acquitted. This decision includes criminal cases Nos. 3896, 3897, 3898 to 3899."

The clerk of court issued a notice for the accused Francisco Martinez to appear on July 7, 1951, for the reading of the sentence in the four criminal cases, but the latter asked for postponement until July 14, 1951, when only the dispositive part of the decision was actually read to him, as he waived the reading of its full text, although copy of the decision was received by Martinez and the fiscal. Upon the other hand, no requirement was made for the

appearance of the respondents and other accused who were acquitted, but copies of the decision were served upon each of them. Counsel for respondents Ildefonso Tierra and Delfin M. Reyes actually received a copy from the clerk of court on July 20, 1951.

The prosecution filed in the four cases (1) a motion for reconsideration dated July 19, 1951, seeking to modify the decision of Judge Rodriguez of June 28, 1951, so as to condemn those acquitted to pay jointly and severally, by way of indemnity and reparation, the amount involved; and (2) a motion for reconsideration praying that all the accused be convicted except Baldomero Perez. Respondents Ildefonso Tierra and Delfin M. Reyes, through counsel, filed the corresponding opposition. Accused Francisco Martinez in turn filed a motion for new trial. The prosecution subsequently filed a memorandum in support of its two motions for reconsideration, assailing the decision of June 28, 1951, on the grounds that four separate judgments should have been rendered; that the result does not conform to the findings contained in the decision; and that said decision was not validly promulgated. On December 26, 1951, counsel for the respondents received a notice from the clerk of court to the effect that the reading of the decision in the four criminal cases would take place on January 10, 1952. Upon inquiry, the respondents were informed by telegram by the clerk of court that the promulgation of the new decision rendered by Judge Sulpicio V. Cea, scheduled for January 10, referred to the same four cases against all the accused. On January 4, 1952, counsel for respondents accordingly filed a manifestation and motion, alleging that Judge Cea had no jurisdiction or authority to render a new decision. This was overruled by Judge Cea on January 9, 1952, at the same time setting the promulgation of his new decision for January 16 and later for February 7, 1952.

The respondents thereupon filed with this Court a petition for prohibition (G. R. No. L–5389), seeking to restrain Judge Cea from further proceedings in the four criminal cases, but said petition was dismissed, this Court pointing out that respondents' remedy was appeal if convicted. On February 19, 1952, Judge Sulpicio V. Cea issued an order setting the reading of his decision for March 4, 1952, with the warning that failure on the part of the accused to appear would result in the confiscation of their bonds and their arrest. On this latter date, Judge Cea issued (1) an order denying the motions for new trial dated July 25, 1951, on the ground that no decision had as yet been legally rendered; (2) an order disallowing the appeal of respondent Nicolas Ybañez on the ground that the appealed order dated March 3, 1952 was interlocutory; and (3) an order denying the motion of attorney

for respondent Ildefonso Tierra, praying that the promulgation of a new decision be suspended.

The respondents filed on March 20, 1952, a petition for certiorari in the Court of Appeals against Judge Sulpicio V. Cea and Fiscal Alberto Jimenez of Leyte, praying that the orders of Judge Cea in the four criminal cases, particularly those dated January 9, February 27 and 29, and March 4, 1952, and all his proceedings subsequent to the decision of Judge Rodriguez of June 28, 1951, be declared null and void; and that Judge Cea be restrained from rendering a new decision in derogation or modification of the decision of acquittal already rendered by Judge Rodriguez. After proper proceedings, the Court of Appeals rendered on August 31, 1953, a decision the dispositive part of which reads as follows: "In the light of the foregoing, we hereby grant the petition. We declare all the orders of the respondent Judge issued in said four criminal cases Nos. 3896, 3897, 3898 and 3899, Court of First Instance of Leyte, particularly the order dated January 9, 1952, February 27, 1952 and March 4, 1952, and any acts of said respondent Judge in the proceedings subsequent to the decision of June 28, 1951, null and void; ordering said respondent Judge or any Judge in his place to desist from rendering and promulgating any new decision in said criminal cases, in derogation or in modification of the said decision of June 28, 1951; and making the writ of preliminary injunction issued in these proceedings, definite and permanent; without pronouncement as to costs." From this decision the present appeal by certiorari was taken in behalf of Judge Cea, Fiscal Jimenez, and the People of the Philippines.

There is now no dispute that the new decision rendered and sought to be promulgated by Judge Sulpicio V. Cea is one of conviction; and the principal question that arises is whether it can validly replace the decision of Judge Rodriguez in the manner and under the facts already above related. While the herein petitioners contend that the decision of Judge Rodriguez of June 28, 1951, had not been duly promulgated because it was not read to the respondents and other accused acquitted, the respondents argue that the actual reading in the presence of the accused is an indispensable requisite only in case of conviction. The provision necessarily involved is section 6 of Rule 116 of the Rules of Court which reads as follows:

"SEC. 6. *Promulgation of judgment.*—The judgment is promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it. The defendant must be personally present if the conviction is for a grave or less grave offense; if for light offense, the judgment may be pronounced in the presence of his attorney or representative. And when the judge is absent or outside of the province, his presence is not necessary and the judgment may be promulgated or read to the defendant by the clerk of the court."

It is noteworthy that this rule makes the general statement that a judgment is promulgated by reading it in the presence of the defendant. This is followed by a more specific mandate that the defendant must be personally present in case of conviction for a grave or less grave offense, and that the presence of his attorney or representative is sufficient in case of conviction for a light offense. As the rule has to be construed in its entirety, the phrase "in the presence of the defendant" appearing in the first sentence should be deemed as having reference only to the specific cases mentioned in the second sentence. Otherwise this second sentence would have been worded in such a way as to order the presence of the defendant in case of conviction for or acquittal of a grave or less grave offense, and the presence of his attorney or representative in case of conviction for or acquittal of a light offense. By the same token, it cannot be pretended that the presence of the judge is necessary in all cases; because the phrase "in the presence" of the judge appearing in the first sentence of section 6 should be considered in relation to the third sentence which dispenses with such presence when he is absent or outside of the province.

The reasons for requiring the attendance of the accused in case of conviction for a grave or less grave offense have already been enumerated by this Court in the case of U. S. *vs.* Beecham, 28 Phil. 258, as follows: " 'The common law required, when any corporal punishment was to be inflicted on the defendant, that he should be personally present before the court at the time of pronouncing the sentence. (1 Chitty's Crim. Law [5th Am. ed.], 693, 696.) Reasons given for this are, that the defendant may be identified by the court as the real party adjudged to be punished (Holt, 399); that the defendant may have a chance to plead or move in arrest of judgment (King *vs.* Speke, 3 Salk., 358); that he may have an opportunity to say what he can say why judgment should not be given against him (2 Hale's Pleas of the Crown, 401, 402); and that the example of the defendants, who have been guilty of misdemeanors of a gross and public kind, being brought up for the animadversion of the court and the open denunciation of punishment, may tend to deter others from the commission of similar offenses (Chitty's Crim. Law [5th ed.], 693, 696). * * *." It is needless to state that none of these reasons is applicable to an accused who is acquitted.

Section 5 of Rule 116 provides that a judgment is promulgated by "reading" it in the presence of defendant. Since the presence of the defendant is, as already stated, required only in case of conviction for a grave or less grave offense, and "to read a writing or a document means to make known its contents" (Balentine's Law Dictionary,

48th Ed.), there had been due promulgation of the decision of Judge Rodriguez of June 28, 1951, after the clerk of the Court of First Instance of Leyte entered it in the criminal docket and after the respondents were served with copies of said decision. Indeed, "a statute providing that accused must be present for purpose of judgment, 'if the conviction be for an offense punishable by imprisonment,' applies only where he is found guilty and in case of an acquittal his presence is not necessary," (24 C. J. S. 79); and "under a statute which by implication requires accused's presence only in case of conviction, the voluntary absence of accused at the time that the jury are ready to return their verdict does not deprive him of his right to have a judgment of acquittal entered on a verdict of not guilty after its rendition and publication," (24 C. J. S. 80).

The other point raised by the petitioners is that the petition for certiorari filed in the Court of Appeals by the respondents, was barred by our resolution in G. R. No. L–5389, dismissing respondents' petition for prohibition on the ground that their remedy was appeal if convicted. It being now conceded that the new decision of Judge Sulpicio V. Cea, intended to be promulgated by him is one of conviction, the resolution invoked is no longer controlling, since appeal was suggested in the absence of any conclusive allegation that Judge Cea would convict the respondents. Said resolution did not exclude any other remedy, more adequate and speedy, for preventing the promulgation of a new decision of conviction, if and when already certain.

In view of our conclusion that the judgment of acquittal rendered by Judge Rodriguez had already been validly promulgated, no other decision, much less that of Judge Cea convicting the respondents, may be promulgated without violating the rule against double jeopardy. As a matter of fact, the position of the petitioners is that Judge Cea could either modify or change entirely the decision of Judge Rodriguez only if it be conceded that the latter decision was not duly promulgated. In commenting upon section 7 of Rule 116 of the Rules of Court, with respect to the modification of judgment, former Chief Justice Moran in his Comments on the Rules of Court, 1952 ed., Vol. 2, page 867, stated that "the provision refers to a judgment of conviction, because if it is one of acquittal, it becomes final immediately after promulgation and cannot thus be recalled thereafter for correction or amendment."

Wherefore, the appealed decision of the Court of Appeals is hereby affirmed. So ordered without costs.

Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepción, and *J. B. L. Reyes, JJ.,* concur.

Judgment affirmed.

[No. L-5619. Noviembre 22, 1954]

BUTUAN SAWMILL, INC., recurrente, *contra* La BAYVIEW THEATER CO., INC., recurrida

1. UTILIDADES PÚBLICAS; FRANQUICIAS CONCEDIDAS POR LEY; ¿CUÁNDO SURTEN EFECTO?—La Ley No. 497 de la República dispone que "Con sujeción a los términos y condiciones establecidos en la Ley No. 3636, según está reformada por la Ley No. 132 del Commonwealth..... se concede a la Butuan Saw Mill, Inc., por un período de 50 años desde la aprobación de esta Ley, el derecho, y privilegio y autorización para construir, sostener y explotar una fábrica de alumbrado, calefacción y fuerza motriz eléctricos con el objeto de producir y distribuir luz, calor y fuerza motriz eléctricos para su venta dentro de los límites del municipio de Nasipit, provincia de Agusan: Entendiéndose, que el poseedor de la franquicia que se concede por esta Ley, empezará a explotarla dentro de un año y medio desde la aprobación de dicha franquicia, si no es un empresario en la actualidad;....." Al tiempo de la aprobación de la ley, la Butuan Sawmill no explotaba aun el negocio de fluído eléctrico en Nasipit, ni poseía una franquicia municipal. No comenzó a instalar su planta eléctrica dentro del año y medio provisto por la ley, pero presento solicitud, en 24 de julio de 1950, para obtener certificado de conveniencia pública ante la Comisión de Servicios Públicos, la cual denegó la solicitud en 1.º de marzo de 1952 y concedió a la Bayview Theater Co. Inc., a petición de ésta, el correspondiente certificado de conveniencia pública. La Butuan Sawmill contiende que, en vista de las disposiciones de los artículos 8 y 9 de la Ley No. 3636, tal como fue enmendada por la Ley No. 132 del Commonwealth, y del artículo 18 de la Ley No. 146, el año y medio concedido a ella debe comenzar, no desde la aprobación de la Ley No. 497, sino desde la expedición a su favor del certificado de conveniencia pública. *Se declara:* Que esta pretensión es insostenible. La Ley No. 497 dispone que "El incumplimiento de este requisito ('empezará a explotarla dentro de un año y medio desde la aprobación de la franquicia') dará lugar *ipso facto* a la cancelación y anulación de la franquicia."

2. HERMENÉUTICA LEGAL; DISPOSICIONES ESPECIALES PREVALECEN SOBRE DISPOSICIONES GENERALES.—Es principio bien establecido de hermenéutica legal el de que las disposiciones especiales deben prevalecer sobre las disposiciones generales. Esa condición de comenzar a explotar el negocio de fluído eléctrico dentro del año y medio después de aprobada la Ley No. 497 es incompatible con las disposiciones de los artículos 8 y 9 de la Ley No. 3636 tal como fue enmendada, y artículo 18 de la Ley No. 146. Las disposiciones de las leyes citadas son aplicables a todos los solicitantes de certificado de conveniencia y necesidad pública en general; pero la condición impuesta por la Ley No. 497 de que se instalase dentro de un año y medio inmediatamente después de concedida la franquicia, es imperativa para este caso particular, y tan imperativa que sin su cumplimiento queda cancelada la franquicia. La ley especial que concede una franquicia tiene la índole de contrato privado: se adopta ordinariamente después de haberse tenido en cuenta por el Congreso las circunstancisa especiales que tiene que remediar y los derechos privados en relación con los beneficios resultantes para el estado (Manila Railroad Co. *contra* Raferty, 40 Jur. Fil., 237).

APELACIÓN contra una sentencia de la Comisión de Servicios Públicos.

Los hechos aparecen relatados en la decisión del Tribunal.

Sres. *Evaristo R. Sandoval* y *Basilio Francisco* por la recurrente.

El abogado *V. Sian Melliza* por la recurrida.

PABLO, *M.:*

En 24 de julio de 1950 la Butuan Sawmill, Inc., presentó una solicitud a la Comisión de Servicios Públicos (causa No. 57855), pidiendo que se expidiese a su favor un certificado de conveniencia pública para instalar y operar una fábrica de fluído eléctrico en el municipio de Nasipit, Agusan, de acuerdo con la franquicia concedida por la Ley de la República No. 497. Contra esta solicitud se opuso la Bayview Theater Co., Inc. en 21 de septiembre del mismo año, alegando que ya había solicitado a la Comisión, en la causa No. 57212, la aprobación de la franquicia concedida a ella por el consejo municipal de Nasipit para instalar y operar una fábrica de fluído eléctrico en el mismo municipio; que después de concedida la franquicia municipal comenzó inmediatamente los trabajos de instalación, y luego inauguró el servicio eléctrico en dicho municipio; que hasta entonces nadie había pensado en proveer servicio eléctrico sino cuando la recurrida ya había comenzado a suministrarlo.

Las dos causas fueron vistas conjuntamente en 3 de julio de 1951 ante el Comisionado Hon. Feliciano Ocampo, y parte de las pruebas fueron presentadas ante el jefe de la división industrial de la Comisión.

Sometidas las causas, la Comisión de Servicios Públicos dictó sentencia en 1.º de marzo de 1952, denegando la solicitud de la Butuan Sawmill, Inc. en la causa No. 57855 y concediendo la solicitud de la Bayview Theater, Co., Inc. en la causa No. 57212. Dentro del plazo reglamentario, la recurrente presentó petición de revisión.

La recurrente alega que la Comisión de Servicios Públicos erró (1) al sobreseer su solicitud por haber dejado de instalar y operar la fábrica de fluído eléctrico en el municipio de Nasipit dentro de un año y medio desde la aprobación de la franquicia legislativa, como lo exige el artículo 1.º de la Ley de la República No. 497; (2) al no declarar que la franquicia mediante ley concedida a la recurrente es preferente a la franquicia municipal concedida a la recurrida; y (3) que la decisión es contraria a las pruebas obrantes en autos.

Las conclusiones de hecho de la Comisión de Servicios Públicos son las siguientes:

"It appears from the records and the evidence presented at the hearing of these cases that on November 5, 1948, the Municipal Mayor of Nasipit, on demand of the people, requested the Bayview Theater Co., Inc. to render electric service to the people of Nasipit;

that the Bayview Theater Co., Inc., acting on said request of the Municipal Mayor applied to the Municipal Council of Nasipit for a special permit to install and operate its 10 Kva, generating unit in the municipality of Nasipit; that the special permit was granted by the Municipal Council of Nasipit in its Resolution No. 38, dated May 28, 1949, that by virtue of said special permit, Bayview Theater Co., Inc. installed and operated its 10 Kva. generating unit and commenced the rendition of its service on August 15, 1949, and that the Bayview Theater Co., Inc., since the commencement of its operation has been and is at present continuously rendering electric service in Nasipit.

"On May 17, 1950 the Municipal Council of Nasipit granted Bayview Theater Co., Inc., a franchise in its Resolution No. 34. On May 30, 1950, the Provincial Board of Agusan passed Resolution No. 121, forwarding to the Public Service Commission Resolution No. 34, series of 1950, of the Municipal Council of Nasipit and recommending its approval. The Bayview Theater Co., Inc. filed its application in Case No. 57212 on June 6, 1950. In a letter dated June 23, 1950, the Commission advised the Bayview Theater Co., Inc., to secure from the Provincial Board of Agusan express approval and not just a recommendation for approval of its municipal franchise. On June 7, 1950, the Municipal Council of Nasipit passed Resolution No. 37 protesting to the President of the Philippines against the approval of House Bill No. 591, granting a franchise to Butuan Sawmill, Inc. The Bill was signed by the President and became Act No. 497 on June 12, 1950. In view of the enactment of Act No. 497, the Provincial Board of Agusan adopted Resolution No. 142 on June 30, 1950 disapproving the action taken by the Municipal Council of Nasipit in protesting against the approval of the bill granting the franchise to Butuan Sawmill, Inc. On July 11, 1950, however, the Provincial Board passed Resolution No. 150, approving Resolution No. 34, dated May 17, 1950, of the Municipal Council of Nasipit, granting the franchise to Bayview Theater Co., Inc. The Butuan Sawmill, Inc. filed its application in Case No. 57855 on July 24, 1950.

"Bayview Theater Co., Inc. is a corporation duly registered in the Securities and Exchange Commission, 90% of the capital of which are owned by Filipino citizens. The authorized capital of the Company is ₱50,000. At the time of incorporation, the subscribed capital was ₱14,650 and the paid-up capital was ₱13,650. The paid-up capital has since been increased to ₱24,000. Most of the incorporators are employees of the Nasipit Lumber, Inc. The stockholders of the Company are living in about ninety percent of the total number of houses in the poblacion of Nasipit. The company established first a theater in Nasipit and later extended the facilities of the theater to render electric service to the streets and people of Nasipit. When it commenced the rendition of its electric service on August 15, 1949, it had in operation of 10 Kva. generating unit. To meet the demand of the public, the Company replaced the 10 Kva. unit with a 50 Kva. unit in February 1950. It has fully paid for all the equipment including the generating unit, the transformers, and lines and the power house. It is not indebted for any equipment used in the electric plant. At the beginning of its operation, the Company was losing but at the present time, the expenses of rendering the service are about equal to the revenues. There are now 144 customers served with a prospect of 30 additional customers in the future. The operation of the plant has improved the town. Prior to the rendition of the electric service, the only recreational facilities in the town of Nasipit were a cockpit and the theater owned by the Company. As a result of the opera-

tion of the electric plant, wholesome recreational establishments were opened such as boxing shows and bowling alleys. The use of refrigerators enabled the refreshment parlors to serve cold drinks and the installation of electric lights enable the private school to offer evening classes.

"The Butuan Sawmill, Inc. is a Corporation duly organized under the laws of the Philippines. Its authorized capital stock is ₱500,000 all of which have been subscribed and paid. It is a closed corporation composed of Rafael Consing who has been its president since its organization in 1920 and his children who are all Filipino citizens. The corporation besides engaging in the lumber and shipping business is an electric plant operator. It is a holder of reconstituted certificates of public convenience and necessity for the operation of electric services in the City of Butuan and in the municipality of Cabadbaran, Agusan, and is at present operating power plants and actually rendering electric services in said city and municipality. As grantee of the franchise for the operation of an electric service in the municipality of Nasipit, under Republic Act No. 497, which is subject to Act No. 3636 as amended, the Butuan Sawmill, Inc. has filed its written acceptance of the terms and conditions of said franchise and has executed a surety bond in the amount of ₱1,000 within the period fixed in Act No. 3636 as amended.

"With regards to the public necessity and convenience of an electric service in the town of Nasipit, it appears that the said town is located at the Bay of Nasipit which is one of the best harbors in Northern Mindanao. It is the port through which logs and lumber from the province of Agusan are exported to foreign countries. There are about 300 houses in the poblacion and another 300 in outlying barrios. Electric service is, therefore, urgently needed in the town of Nasipit.

"The records show that the needs of the inhabitants of Nasipit can be adequately served by one electric plant operator. The question to be resolved by this Commission is who of the two applicants should be authorized to operate an electric service in Nasipit."

Estas conclusiones están sostenidas por las pruebas. El hecho de que no apareciese en la transcripción de las notas taquigráficas que el 90 por ciento de las casas en la población de Nasipit están ocupadas por los accionistas de la Bayview Theater, Co., Inc., no es razón suficiente para que se revoque la decisión; es un detalle tan insignificante que, aún descartándolo de la decisión, no altera el conjunto de los hechos esenciales probados.

La recurrente contiende que no podía comenzar la instalación de la fábrica, porque (a) el artículo 8 de la Ley No. 3636, tal como fué enmendada por la Ley del Commonwealth No. 132, dispone que "the grantee shall not exercise any rights or privileges under this franchise, nor commence any construction thereunder, unless and until the grantee shall first file with the Public Service Commission within one hundred and twenty days from the date of the approval of this Act," porque (b) el artículo 9 de dicha ley dispone que "after compliance with the requirements of the next preceding section, the Public Service Commission or its legal successor, by proper order or writ, shall authorize

the construction of necessary work for the purposes of this franchise, within a reasonable time to be determined by the said Commission", y porque, (c) además, el artículo 18 de la Ley No. 146 dispone que es ilegal "to engage in any public service business without having first secured from the Commission a certificate of public convenience * * * except grantees of legislative franchises, expressly exempting such grantees from the requirement of securing a certificate from the Commission".

La Comisión de Servicios Públicos—arguye la recurrente—sólo dictó su decisión en estas dos causas en 1.º de marzo de 1952; por tanto, la recurrente no podía comenzar la instalación dentro del año y medio concedido por la Ley No. 497, que termina en 12 de diciembre de 1951.

Para armonizar las disposiciones de las tres leyes citadas, el año y medio concedido a la recurrente—según ella—debe comenzar, no desde la aprobación de la Ley No. 497, sino desde la expedición a su favor del certificado de conveniencia y necesidad públicas. Esta pretensión es insostenible. La Ley No. 497 dispone que "Con sujeción a los términos y condiciones establecidos en la Ley Número Tres Mil seiscientos treinta y seis, según está reformada por la Ley Número Ciento treinta y dos del Commonwealth, * * * se concede a la Butuan Sawmill, Incorporated, por un período de cincuenta años desde la aprobación de esta Ley, el derecho, privilegio y autorización para construir, sostener y explotar una fábrica de alumbrado, calefacción y fuerza motriz eléctricos con el objeto de producir y distribuir luz, calor y fuerza motriz eléctricos para su venta dentro de los límites del municipio de Nasipit, Provincia de Agusan: *Entendiéndose,* Que el poseedor de *la franquicia que se concede por esta Ley,* empezará a explotarla dentro de un año y medio desde la aprobación de dicha franquicia, si no es un empresario en la actualidad; y dentro de seis meses si ya es poseedor de una franquicia municipal. El incumplimiento de este requisito dará lugar *ipso facto* a la cancelación y anulación de la franquicia." Al tiempo de la aprobación de la ley, la recurrente no explotaba aún el negocio de fluído eléctrico en Nasipit, ni poseía una franquicia municipal; por tanto, debía comenzar a explotar el negocio dentro de un año y medio desde la aprobación de dicha ley. La falta de cumplimiento de dicha condición *ipso facto* dió lugar a la cancelación de la franquicia. El Bill No. 591 o proyecto de ley presentado al efecto contenía la siguiente nota explicativa: "In said municipality (Nasipit), there is no electric plant to furnish the locality with light facilities. It is certainly a blessing for the residents of said municipality if this franchise bill be approved." (Exhibit 1, Bayview Records, Case No. 57855.)

En aquel tiempo el gobierno encaminaba todos sus esfuerzos por rehabilitar los servicios de utilidad pública destrozados por la guerra, facilitar el establicimiento de cualquier actividad o empresa para acelerar el mejoramiento de las condiciones económicas dislocadas por la guerra. Al aprobar el Bill No. 591 el Congreso tenía evidentemente el propósito de apresurar el establecimiento de la fábrica de fluído eléctrico en el municipio de Nasipit, y por eso, impuso, como condición, la de que la recurrente comenzase el establecimiento de la fábrica dentro del plazo fijado después de concedida la franquicia que ella solicitaba, y el Presidente, al aprobar la Ley No. 497, indudablemente tenía también el deseo de que allí se estableciese cuanto antes un servicio de fluído eléctrico. El Congreso sabía el tiempo que se pierde para la concesión de un certificado de conveniencia pública; que si no ponía la condición de un año y medio, mucho tiempo transcurriría hasta que el municipio de Nasipit obtuviese servicio de fluído eléctrico. Era la época de la reconstrucción de las areas destruidas y la reorganización de todos los elementos disponibles para que el país saliese de aquella condición caotica.

Esa condición de comenzar a explotar el negocio de fluído eléctrico dentro del año y medio después de aprobada la Ley No. 497 es incompatible con las disposiciones de los artículos 8 y 9 de la Ley No. 3636, tal como fué enmendada y artículo 18 de la Ley No. 146: si se cumplen estas tres disposiciones legales se infringe aquella condición de un año y medio. Las disposiciones de las leyes citadas son aplicables a todos los solicitantes de certificado de conveniencia y necesidad públicas en general; pero la condición impuesta por la Ley No. 497 de que se instalase dentro de un año y medio inmediatamente después de concedida la franquicia, es imperativa para este caso particular, y tan imperativa que sin su cumplimiento queda cancelada la franquicia. La Ley especial que concede una franquicia tiene la índole de contrato privado: se adopta ordinariamente después de haberse tenido en cuanta por el Congreso las circunstancias especiales que tiene que remediar y los derechos privados en relación con los beneficios resultantes para el Estado (Manila Railroad Co. *contra* Rafferty, 40 Jur. Fil., 237). La Ley No. 497 se considera como excepción a la legislación general que regula la concesión de certificados de conveniencia y necesidad públicas.

"'Special provisions relating to specific subjects control general provisions relating to general subjects. The things specially treated will be considered as exceptions to the general provisions.'" (City of Birmingham *vs.* Southern Express Co. 164 Ala 529, 51 So 159.)

"Where there are two laws relating to the same subject they must be read together and the provisions of one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms." (Mark D. Eagleton *vs.* Richard Murphy, 138 A. L. R., 749.)

"A special statute controls a general statute relating to the same subject-matter. Stadler *vs.* City of Helena, 46 Mont. 128, 127 P. 454; Daley *vs.* Torrey, supra; Franzke *vs.* Fergus Country, 76 Mont. 150, 245 P. 962; Indian Fred *vs.* State, 36 Ariz. 48, 282 P. 930; State *vs.* White, 41 Utah, 480, 120 P. 331; In re Hellier's Estate, 169 Cal. 77, 145 P. 1008; Country Sanitation District *vs.* Payne, 197 Cal. 448, 241 P. 264; 25 R. C. L., 929; State *vs.* Preston, 103 Or. 631, 206 P. 304, 23 A. L. R. 414; Ahern *vs.* Livermore Union High School District, 208 Cal. 770, 284 P. 1105; Wulf *vs.* Fitzpatrick, 124 Kan. 642, 261 P. 838. A special statute covering a particular subject-matter must be read as an exception to the statute covering the same and other subjects in general terms. State ex rel. Special Road District *vs.* Millis, 81 Mont. 86, 261 P. 885; Western & Southern Indemnity Co. *vs.* Chicago Title & Trust Co. 128 Ohio St. 422, 191 N. E. 462. Where special and general statutes relate to the same subject-matter, the special act will prevail as far as the particular subject-matter comes within its provisions. State ex rel. McDowell, Inc., *vs.* Smith, 334 Mo. 653, 67 S. W. (2d) 50; United States *vs.* Hess (C. C. A.) 71 F. (2d) 78. (Re Estate of Charles Wilson, 105 A. L. R., 367.)

Es principio bien establecido de hermeneútica legal el de que las disposiciones especiales deben prevalecer sobre las disposiciones generales, y este Tribunal aplicó esta doctrina en varios casos: "No pueden aplicarse—dijo en Arayata contra Joya—al presente caso, como lo ha hecho el Tribunal a quo, las disposiciones del Código Civil referentes a los bienes de la sociedad de gananciales, puesto que la Ley que regula la adquisición, disposición y transmisión de los derechos sobre terrenos de los frailes, adquiridos por el Gobierno Insular, establece reglas que están en pugna con dichas disposiciones del Código Civil, y siendo este cuerpo legal de carácter general y la Ley No. 1120 de carácter especial, ésta es de preferente aplicación." (51 Jur. Fil., 689.) "El artículo 176 del Código de Procedimiento—dijo en Leyte A. & M. Oil Co. contra Block, Johnston & Greenbaum,—no es tan terminante ni completo para los casos de insolvencia como las disposiciones contenidas en la Ley de Insolvencia, cuyos precedimientos son definitivos en cuanto a la disposición de los créditos, lo cual no ocurre en las actuaciones sobre depositaría. Por consiguiente, no erró el Juzgado a quo al declararse competente en las presentes actuaciones y al no sobreseerlas." (52 Jur. Fil., 442.) "Las disposiciones del Código de Procedimiento Civil—dijo en Philippine Trust Co. contra Macuan—referentes a la administración y al inventario de los bienes de la pupila demente casada o no, son de carácter general, puesto que afectan a todos los bienes de la misma indistintamente; al paso que las disposiciones del Código Civil referentes a la administración de los bienes de la misma pupila demente casada son de carácter especial; por consiguiente, éstas deben aplicarse con preferencia a aquéllas, no siendo posible armonizar ambas disposiciones legales." (54 Jur. Fil., 700.) "Porque el no haber el demandado—dijo en

Sancho contra Lizarraga—aportado a la sociedad toda la cantidad por él prometida sólo tuvo el efecto de constituirle en deudor a la sociedad de dicha suma y de sus intereses además de los daños que por tal motivo se hubieron ocasionado, sin que de ello naciera para el demandante el derecho de exigir la rescisión del contrato social, bajo el artículo 1124 del mismo Código. Este último artículo no puede aplicarse al caso presente pues, se refiere a la resolución de las obligaciones en general, mientras los referidos artículos 1681 y 1682 atañen específicamente al contrato de sociedad en particular. Y es principio bien sabido que los preceptos especiales deben prevalecer sobre los generales." (55 Jur. Fil., 643.)

Esta doctrina ha sido reafirmada en Philippine Railway Co. *contra* Collector of Internal Revenue, G. R. No. L–3859, (Marzo 25, 1952) y en Visayan Electric contra David, 49 Off. Gaz., 1385.

Cuanto al segundo error, la recurrente no puede reclamar preferencia porque ella no cumplió con la condición impuesta por la ley.

Se confirma la decisión apelada con costas contra la recurrente.

Padilla, A. Reyes, Jugo, Bautista Angelo, Concepción y *J. B. L. Reyes, MM.*, están conformes.

Parás, Pres., está conforme con el resultado.

BENGZON, *J.*, concurring:

I concur. For having failed to "start operation" within one and one-half years from June 12, 1950, the Butuan Sawmill forfeited its franchise granted by Rep. Act No. 497.

After the approval of said Act *it was unnecessary* for petitioner previously to get a certificate of public convenience from the Public Service Commission before beginning business, the question of convenience having already been determined favorably by Congress upon the approval of Rep. Act No. 497. Indeed, Act No. 3636 as amended by Com. Act No. 132 clearly contemplates that *before approving a franchise* for electric light and power, the Congress should be satisfied of its convenience. Wherefore, *it must be presumed* that when it approved Rep. Act No. 497 Congress was convinced of the convenience of permitting the Butuan Sawmill to operate its franchise.

It is true that under Act 3636 and Com. Act 132 a certificate of public convenience issued by the Public Service Commission *should be filed* before the Congress approves a franchise. But that does not prevent Congress from dispensing with such certificate on occasion, and approving a grant of franchise—as it did in this case.

Reason and logic would conclude that in approving the franchise, Congress could not have intended [1] to empower the Public Service Commission to nullify the grant, upon a finding that its operation is not for public convenience. Why, that is the first question the Congress decides, and should decide, in the grant of franchise!

There is a ground for suspicion that the petitioner, in effect, attempted indirectly to *extend the time* fixed by Republic Act No. 497 (1½ years) to start operation, by means of this doubtful expedient of addressing a petition to the Public Service Commission and then leisurely waiting for its resolution.

Moreover, conceding that it was essential to secure the certificate of the Public Service Commission before starting operations, I believe that petitioner having time to obtain it, did not obtain it within one and one-half years from June 12, 1950. Hence its franchise lapsed, *ex vi termini.*

Petitioner argues that its failure to obtain the certificate was due to the delay in the proceedings before the Public Service Commission. Nevertheless, it does not appear that the latter was urged to decide promptly on account of the deadline. And surely, mandamus was available if such governmental body had been remiss in the performance of its functions. Anyway, in the matter of privileges granted subject to conditions, the maxim *dura lex sed lex* may properly be applied.

Se confirma la sentencia.

[No. L–6515. October 18, 1954]

DAGUHOY ENTERPRISES, INC., plaintiff and appellee, *vs.* RITA L. PONCE, with whom is joined her husband, DOMINGO PONCE, defendants and appellants.

1. OBLIGATIONS AND CONTRACTS; LOANS; OBLIGATION WITH A PERIOD; PURE OBLIGATION.—Although the original loan, including its increased amount, was payable within six years, and so did not become due and payable until the expiration thereof, the debtor lost the benefit of the period by reason of her failure to give and register the security agreed upon in the form of the two deeds of mortgage; and so the obligation became pure and without any condition. Consequently, the loan became due and immediately demandable.

2. ID.; ID.; DEPOSIT OF THE AMOUNT OF THE LOAN IN ANOTHER ACTION IS NOT EQUIVALENT TO PAYMENT; DEBTOR IS NOT RELIEVED FROM PAYMENT OF INTEREST.—The deposit made by the debtor, in another action separate and different from the present, in favor of the creditor, though eventually would be given to the

[1] In the absence of clear indication.

latter, did not relieve the debtor from the payment of interest from the time of the deposit because it did not amount to the payment of the loan.

APPEAL from a judgment of the Court of First Instance of Manila. Montesa, *J.*

The facts are stated in the opinion of the court.

Marcelino Lontok and Marcelino Lontok, Jr. for defendant and appellant.

Zavalla, Bautista and *Nuevas* for plaintiff and appellee.

MONTEMAYOR, *J.;*

The Daguhoy Enterprises, Inc., a local corporation, with principal office in the City of Manila filed in the Court of First Instance of the City Civil Case No. 15923 against *Rita L. Ponce* and her husband *Domingo Ponce,* for the collection of a loan of ₱6,190 with interest at 12 per cent per annum from June 24, 1950, plus ₱2,500 as attorney's fees and ₱34 as expenses of litigation. Defendants filed an answer admitting practically all the allegations of the complaint, set up affirmative defenses, and a counterclaim asking for the cancellation of the mortgage which secured the payment of the loan of ₱6,190. They also filed a petition for the inclusion of Potenciano Gapol as a third party litigant, at the same time filing a third party complaint against him asking for damages in the amount of ₱25,000. The plaintiff corporation answered the counterclaim and opposed the petition for the inclusion of a third party litigant. Thereafter, plaintiff corporation filed a mtion for judgment on the pleadings which petition was opposed by the defendants. Then, on October 9, 1952, the trial court rendered judgment whose dispositive part we reproduce below:

"*En virtud de todo lo expuesto,* el Juzgado dicta sentencia de acuerdo con los escritos, condenando a los demandados a pagar a la demandante la suma de ₱6,190 mas sus intereses a razún de 12 por ciento anual desde el 10 de marzo de 1951 hasta su completo pago, mas ₱1,000 como honorarios de abogado y ₱34 como gastos de la incoación de esta demanda.

"*Asi se ordena.*"

Defendants are now appealing from that decision.

The abovementioned decision was rendered on the pleadings. The facts of the case which we gathered from the said pleadings and which we find are as follows. In the year 1950, defendant-appellant Domingo Ponce was Chairman and Manager and his son Buhay M. Ponce was Secretary-Treasurer, of the plaintiff corporation Daguhoy Enterprises, Inc. On June 24th of said years Rita L. Ponce, wife of Domingo, executed in favor of plaintiff corporation a deed of mortgage over a parcel of land including the improvements thereon, situated in Manila, to secure the payment of a loan of ₱5,000 granted to her by said corporation, payable within six years with interest at 12

per cent per annum. On March 10, 1951, Rita L. Ponce with the consent of her husband Domingo executed another mortgage deed amending the first one, whereby the loan was increased from ₱5,000 to ₱6,190, the terms and conditions of the mortgage remaining the same. Rita and Domingo presented the two mortgage deeds for registration in the office of the register of deeds but the said register after going over the papers noted defects and deficiencies and advised Rita and Domingo to cure the defects and furnish the necessary data. Instead of complying with the suggestion and requirements, the two withdrew the two mortgage deeds and then mortgaged the same parcel of land in favor of the Rehabilitation Finance Corporation (RFC) to secure a loan.

Potenciano Gapol was the majority stockholder in the Daguhoy Enterprises, Inc. and naturally was interested in the security of the payment of the loan aforecited. Upon learning that the deeds of mortgage were not registered and what is more, that they were withdrawn from the office of the register of deeds and the land covered by the two deeds was again mortgaged to the RFC, he filed Civil Case No. 13753 entitled *"Potenciano Gapol,* for and on behalf of Daguhoy Enterprises, Inc. *vs. Domingo Ponce* and *Buhay M. Ponce"* for accounting, not only for the amount of the loan of ₱6,190 but apparently for other sums, possibly on the theory that the loan in question was granted by Domingo and Buhay acting as Chairman-Manager and Secretary-Treasurer, respectively of the corporation. To account for the amount of said loan, Domingo and his son Buhay filed in court in said Civil Case No. 13753 a check of the RFC in the amount of ₱6,190 in favor of the Daguhoy Enterprises, Inc. and interests amounting to ₱266.10. After the deposit of said check and interests, Potenciano Gapol in representation of the Daguhoy Enterprises, Inc. petitioned the court in said Civil Case No. 13753 for permission to withdraw the amounts, presumably to apply them to the payment of the loan. Because of the opposition of defendants therein to the withdrawal unless the mortgage by Rita was cancelled the court denied the petition. A second petition for withdrawal was filed by Gapol, agreeing to the cancellation of the mortgage as soon as the amounts were withdrawn from the court and deposited with the Bank of America, in the name of Daguhoy Enterprises, Inc. Because of the failure of defendants therein to agree to said second petition, the same was similarly denied. Thereafter, the Daguhoy Enterprises, Inc. filed the present action against Rita and her husband Domingo, as already stated, to collect the amount of the loan, including interests. Later plaintiff corporation filed a manifestation on September 18, 1952, saying that in the course of the pre-trial conference held that same morning in Civil Case No. 13753

the plaintiff therein waived his cause of action for accounting for said sum, which waiver was approved by the presiding Judge.

Although the original loan of ₱5,000 including the increase of ₱1,190 was payable within six years from June 1950, and so did not become due and payable until 1956, the trial court held that under article 1198 of the new Civil Code, the debtor lost the benefit of the period by reason of her failure to give the security in the form of the two deeds of mortgage and register them, including defendants' act in withdrawing said two deeds from the office of the register of deeds and then mortgaging the same property in favor of the RFC and so the obligation became pure and without any condition and consequently, the loan became due and immediately demandable. On this, we agree with the trial court.

One of the affirmative defenses set up by the defendants is that the plaintiff corporation had no legal capacity to sue for the reason that as a coropration it no longer was in existence because on April 16, 1951, at a meeting held by the stockholders and attended by Potenciano Gapol, the majority stockholder, a resolution was adopted dissolving the said corporation, and that as a matter of fact, Gapol was designated Assignee. However, as contended by counsel for the appellee, a mere resolution by the stockholders or by the Board of Directors of a corporation to dissolve the same does not effect the dissolution but that some other step, administrative or judicial, is necessary. Furthermore, as stated by the trial court in its decision, under section 77 of the Corporation Law, a corporation dissolved will continue in existence as a judicial entity for a period of three years after the declaration of its dissolution, to wind up its affairs and protect its interests during the period of liquidation.

The point that remains for determination is the effect, if any, on the present case, of the deposit of the amount of ₱6,190 with part of the interest, in Civil Case No. 33753. There is no question that said deposit was in favor of the Daguhoy Enterprises, Inc. and eventually would be given to it. But did the said deposit relieve the present defendants from the payment of interests from the time of the deposit, on the theory that the deposit amounted to a payment of the loan? The answer must be in the negative. It should be remembered that Civil Case No. 13753 though in the same Court of First Instance of Manila, is a separate and different action, for accounting not only for the amount of the loan but for other sums. The plaintiff in that case was Gapol in behalf of the Daguhoy Enterprises, Inc. and the defendants are Domingo Ponce and his son Buhay M. Ponce. The parties in the present case are different. Furthermore, when the plaintiff in said case 13753 petition-

ed the trial court for permission to withdraw the deposit, presumably to pay the loan involved in the present action, his petition was denied by the court because of the opposition of the defendants therein, one of whom is Domingo Ponce, co-defendant of Rita Ponce in the present case. The result was that the present plaintiff corporation could not take possession and dispose of said amount. In other words, the loan is not yet paid.

We find no necessity for or profit in discussing and ruling on the other points raised in the appeal.

In view of the foregoing, with the modification that the amount of attorney's fees be reduced from ₱1,000 to ₱300 considering that no hearing was held, judgment having been rendered on the pleadings, the decision appealed from is hereby affirmed, with costs.

The sum in the form of an RFC check, and some interests, deposited in Civil Case No. 13753 may be withdrawn to satisfy the judgment in this case, specially to pay the loan of ₱6,190 and part of the interests due.

Parás, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Judgment affirmed with slight modification.

[No. L-7154. October 23, 1954]

PACIFIC MICRONISIAN LINE, INC., petitioner, *vs.* N. BAENS DEL ROSARIO, Acting Commissioner of the Workmen's Compensation Commission and ALFONSA PELINGON, respondents.

1. FOREIGN CORPORATIONS; SUMMONS; "SINE QUE NON" REQUIREMENT BEFORE SUMMONS MAY BE EFFECTED AND JURISDICTION ACQUIRED.—In order that service of process upon a private foreign corporation may be effected and jurisdiction over the same may be acquired, it is a *sine que non* requirement that the foreign corporation be one which is doing business in the Philippines.
2. ID.; ONE SINGLE AND ISOLATED BUSINESS TRANSACTION DOES NOT CONSTITUTE "DOING BUSINESS"; TERM "DOING BUSINESS" CONSTRUED.—It is a rule generally accepted that one single or isolated business transaction does not constitute "doing business" within the meaning of the law, and that transactions which are occasional, incidental and casual, not of a character to indicate a purpose to engage in business do not constitute the doing or engaging in business contemplated by law. In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. (General Corporation of the Philippines, et al. *vs.* Union Insurance Society of Canton, Ltd., 48 Off. Gaz., 73, citing Thompson on Corporations, Vol. 8, 3rd edition, pp. 844-847 and Fisher's Philippine Law of Stock Corporation p. 415.)
3. ID.; ID.; ID.; ENGAGING SERVICES OF DECEASED TO ACT AS COOK AND CHIEF STEWARD IS AN ACT, INCIDENTAL OR CASUAL, AND

NOT PART OF THE BUSINESS.—In the case at bar, petitioner is a corporation exclusively engaged in the business of carrying goods and passengers by sea between the territory of Guam and the Trust Territories of the Pacific Islands. It has no property or office in the Philippines. The only act it did here was to secure the services of the deceased to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation. *Held:* Assuming *arguendo* that the Luzon Stevedoring Co., Inc. acted as agent of petitioner in securing the services of the deceased, this act alone can not be considered as part of the business of petitioner or amount to its doing business in the Philippines, sufficient to make it amenable to process in this jurisdiction.

4. WORKMEN'S COMPENSATION ACT; PROVISIONS OF SECTION 5 THEREOF MERELY DIRECTORY; PROVISIONS BECAME MANDATORY UPON APPROVAL OF REPUBLIC ACT NO. 772; IT CAN NOT APPLY TO CONTRACT BEFORE ITS APPROVAL.—The provisions of section 5 of Act No. 3428 (Workmen's Compensation Act) which provide that "Employers contracting laborers in the Philippine Islands for work outside the same *may stipulate* with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of employment" are merely directory and can only apply when so stipulated in the contract of employment. These provisions became mandatory upon the approval of Republic Act No. 772 on June 20, 1952 and can not apply to contracts executed before its approval.

ORIGINAL ACTION in the Supreme Court. Prohibition.

The facts are stated in the opinion of the court.

Ozaeta, Roxas, Lichauco & Picazo for the petitioner.

Assistant Solicitor General Francisco Carreon and *Solicitor Augusto M. Luciano* for respondent Acting Commissioner.

Salas & Canlas for respondent Alfonsa Pelingon.

BAUTISTA ANGELO, *J.:*

This case concerns a petition for prohibition seeking to restrain respondent Acting Commissioner of the Workmen's Compensation Commission from exercising jurisdiction over petitioner, a foreign corporation, and from further proceeding with the action taken by claimant Alfonsa Pelingon on the ground that it is beyond its jurisdiction.

On September 2, 1952, Alfonsa Pelingon filed a claim for compensation for herself and her two minor children with the Workmen's Compensation Commission against the Luzon Stevedoring Co., Inc., who refused to entertain the claim on the ground that said company was not the employer of the deceased husband of the claimant. On September 17, 1952, the Workmen's Compensation Commission, believing that the Pacific Far East Line, Inc., a foreign corporation licensed to do business in the Philippines, was an agent of petitioner with authority to receive service of

process, served notice of the claim on an official of said foreign corporation who in turn forwarded the notice to petitioner even if the latter was not an agent of, nor was it authorized to accept service of process in behalf of, said petitioner.

On October 10, 1952, petitioner filed a special appearance with the Workmen's Compensation Commission for the sole purpose of asking for the dismissal of the claim on the ground that the Commission had no jurisdiction over it because it is a foreign corporation not domiciled in this country, it is not licensed to engage and is not engaging in business therein, has no office in the Philippines, and is not represented by any agent authorized to receive summons or any other judicial process in its name and behalf.

On October 16, 1952, counsel for Alfonsa Pelingon filed a memorandum in support of their contention that the Workmen's Compensation Commission has jurisdiction over the petitioner. On October 25, 1952, the referee assigned to act on the claim by the Workmen's Compensation Commission entered an order holding that consideration "the failure of the Pacific Micronisian Lines, Ltd., to contest or disauthorize the acts of the Luzon Stevedoring Company, Inc., when the latter signed as agent of the said shipping company on July 18, 1951 in employing the deceased, Luceno Pelingon, there remains no other alternative for this Commission but to hold that it has acquired jurisdiction to hear and determine the compensation claim of the widow, Alfonsa Pelingon, against the Pacific Micronisian Lines, Ltd., * * *."

On November 7, 1952, petitioner filed a motion for reconsideration, which was vigorously opposed by counsel for the claimant, and on January 6, 1953, the referee issued an order denying the motion for reconsideration and holding that "Above all rules, court decisions and international commitments under the 'Conflict of Laws', * * * this Commission is duty bound to uphold and keep inviolate the rights to compensation of any Filipino citizen against any foreign corporation, even if the concerned corporation is not registered or not duly licensed to do business in the Philippines."

On January 31, 1953, petitioner filed a petition for review of the orders of the referee and on August 15, 1953, N. Baens del Rosario, Acting Commissioner of the Workmen's Compensation Commission, rendered a decision reaffirming and upholding the views expressed by the referee and ordering that the case be tried on the merits. Hence, the present petition seeking to enjoin the Commission from acting on the claim on the ground that it has no jurisdiction over the petitioner.

In their answer to the petition, respondents set up the following special defenses: (1) Under the law, the Workmen's Compensation Commission has jurisdiction to hear and determine compensation cases even if the injury or death occurs outside the Philippines; (2) petitioner, in entering into a contract of employment with the deceased through a local agent, has impliedly submitted itself to the jurisdiction of our courts; (3) even granting that the two domestic corporations employed by petitioner in connection with the contract of employment were never authorized to act as its agents in the Philippines, the fact that petitioner allowed them to act as though they had power to represent it makes petitioner liable under the contract of employment with the deceased; and (4) petitioner may be considered as having engaged in business in the Philippines because the contract of employment entered into by it with the deceased was in furtherance of its ordinary business as common carrier.

The only issue posed in this petition for prohibition is whether the service of process made by the Workmen's Compensation Commission on the Pacific Far East Line, Inc., an agent of petitioner, is sufficient under our rules to confer jurisdiction upon the Commission over petitioner in passing upon the claim of respondent Alfonsa Pelingon.

The pertinent rule to be considered is section 14, Rule 7, of the Rules of Court, which refers to service upon private foreign corporations. This section provides:

"SEC. 14. *Service upon private foreign corporations.*—If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

The above section provides for three modes of effecting services upon a private corporation, namely: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if there be no special agent, by serving on the government official designated by law to that effect; and (3) by serving on any officer or agent within the Philippines. But, it should be noted, in order that service may be effected in the manner above stated, said section also requires that the foreign corporation be one which is *doing business in the Philippines.* This is a *sine que non* requirement. This fact must first be established in order that summons can be made and jurisdiction acquired. This is not only clear in the rule but is reflected in a recent decision of this Court. We there said that "as long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local

courts." (General Corporation of the Philippines, et al. *vs.* Union Insurance Society of Canton, Ltd., et al., 48 Off. Gaz., 73, September 14, 1950.)

The question that now arises is: Since petitioner is a private foreign corporation not doing business in the Philippines in contemplation of the rule, can it be brought within the jurisdiction of our courts by serving the summons upon the agent who represented it in entering into the contract of employment with the deceased Luceno Pelingon? This would bring us into the determination of the meaning, extent, and scope of the words "doing business" used in our rules in the light of precedents here and other jurisdictions where similar provisions regarding summons on private foreign corporations had been adopted.

For the purposes of this case, it would suffice for us to quote hereunder some leading authorities interpreting the meaning, extent, and scope of the words "doing business" from well-known American treatisers on corporations:

"The statutes usually prohibit in broad terms foreign corporations from 'doing business' in the state until they have complied with the statutory requirements. These requirements have already been noticed. The laws of a state can not become operative upon a foreign corporation until it comes within the state to 'do business'. The controversies have arisen in the main over what constitutes 'doing business' in violation of these statutes. No difficulty is encountered and controversies do not frequently arise where the violation is open and notorious. * * * Generally what constitutes 'doing business' depends upon the terms of the statute and the judicial construction they have received in the several states. *However, such statutes as usually construed do not apply to the doing of a single act, but rather to the carrying on of a continued business.* Such a statute has been properly held to apply only to the carrying on of the ordinary business of such corporations within the state. The expression 'doing business' is not to be given a strict and literal construction so as to make it apply to any corporate dealing. The authorities turn rather upon the character than upon the amount of business done. *This is seen from the fact that the particular transactions are frequently described as 'independent,' 'isolated,' 'occasional,' 'incidental' and 'casual', not of a character to indicate a purpose to engage in business within the state. And to constitute doing business within the meaning of such statutes there must be a doing of some of the works, or an exercise of some of the functions for which the corporations was created.*" (Thompson on Corporations, Vol. 8, 3rd Ed., pp. 843-844.) (Underlining supplied)

"Constitutional and statutory provisions prescribing the terms and conditions upon which foreign corporations shall be permitted to do business in the state do not, as a rule, define the term or specify the particular acts or transactions falling within it. Where, however there is a statutory statement on the matter, it must control and direct the force of the decisions. Otherwise the question is ordinarily one of judicial determination and primarily one of fact. All the combined acts of the foreign corporation in the state must be considered, and every circumstance is material which indicates a purpose on the part of the corporation to engage in some part of its regular business in the state. In consequence, it is difficult and perhaps impossible to lay down any rule of universal application to

determine when a foreign corporation is doing business in a particular state within the purview of the provisions in question. Each case must turn upon its own peculiar facts and upon the language in which the applicable constitutional or statutory provision is couched."

"The authorities are to the effect that where the corporation enters into a single agreement, or engages in some other isolated business act or transaction within a particular state, with no intention to repeat the same or make such state a basis for the conduct of any part of its corporate business, such corporation cannot be said to be doing business or transacting business within the State, within the meaning of the actual statutory provisions regulating the transaction of business by foreign corporations." (Fletcher's Cyclopedia Corporations, Vol. 17, pp. 465–466, 478.)

"Consonant with the general doctrine that the doing of business imports the engagement by a foreign corporation in some continuing activity in the state, or the transaction of some substantial part of its ordinary business there, it is a generally accepted rule that single or isolated acts, contracts, or transactions of such corporations in the state will not ordinarily be regarded as a doing or carrying on of business therein, even though they may be said to fall within the usual or customary business of the corporation. Under this rule, many particular acts and transactions have been held not to amount to doing business in the state." (23 Am. Jur., 353–354.)

And in the recent case of General Corporation of the Philippines, et al. *vs.* Union Insurance Society of Canton, Ltd., *supra*, this Court, in giving recognition to the import of the words "doing business" as interpreted by American authorities, said:

"But, was the Firemen's Fund Insurance Co. in September, 1946, then doing business in the Philippines, within legal contemplation? It is a rule generally accepted that one single or isolated business transaction does not constitute doing business' within the meaning of the law, and that transactions which are occasional, incidental and casual, not of a character to indicate a purpose to engage in business do not constitute the doing or engaging in business contemplated by law. In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. (Thompson on Corporations, Vol. 8, 3rd edition, pp. 844–847 and Fisher's Philippine law of Stock Corporation p. 415)."

Now, assuming *arguendo* that the Luzon Stevedoring Co., Inc., acted as agent of the Pacific Micronisian Line, Inc., petitioner herein, in securing the services of Luceno Pelingon, is this act, standing alone, sufficient to make petitioner amenable to process in this jurisdiction? Can this act be considered as part of the business of petitioner or amount to its doing business in the Philippines in contemplation of the rule?

It should be observed that petitioner is a corporation exclusively engaged in the business of carrying goods and passengers by sea between the territory of Guam and the Trust Territories of the Pacific Islands and for that purpose it was operating a fleet of vessels plying between those ports or territories. Petitioner has no property or office

in the Philippines, nor is it licensed to do business in the Philippines. And the only act it did here was to secure the services of Luceno Pelingon to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation, and the contract of employment was entered into on July 18, 1951. It further appears that petitioner has never sent its ships to the Philippines, nor has it transported nor even solicited the transportation or passengers and cargoes to and from the Philippines. In other words, petitioner engaged the services of Pelingon not as part of the operation of its business but merely to employ him as member of the crew in one of its ships. That act apparently is an isolated one, incidental, or casual, and "not of a character to indicate a purpose to engage in business" within the meaning of the rule. It follows that, even if the Luzon Stevedoring Co., Inc., may be considered as an agent of petitioner for the purposes of the contract of employment, service or process upon it can not confer jurisdiction upon the Workmen's Compensation Commission because of the fact that petitioner is not doing business in the Philippines in contemplation of section 14, Rule 7, of our Rules of Court.

Much capital is made of the fact that petitioner has employed the Far East Line Inc., in notifying the widow of the death of her husband and in delivering to her a sum of money which petitioner has deemed proper to give as an aid to defray the funeral expenses of her husband, which petitioner considered as a pure act of humanity and never intended as a business transaction, respondents contending that such employment has had the effect of establishing the relation of principal and agent which would confer jurisdiction upon the Workmen's Compensation Commission over petitioner. This contention can not likewise be given weight in the light of what we have already stated that such act, being isolated, occasional, or casual, cannot, by any process of reasoning, be considered as part of the operation of the business of petitioner.

We are not unmindful of the provisions of the Workmen's Compensation Act (section 5, Act No. 3428) which say that "Employers contracting laborers in the Philippine Islands for work outside the same *may stipulate* with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of employment;" (Underlining supplied) but these provisions are merely directory and can only apply when so stipulated in the contract of employment. No such stipulation was included in the contract under consideration. These provisions only became mandatory upon the approval of Republic Act No. 772 on June 20, 1952.

This mandate of the law cannot therefore apply to the contract in question which was executed on July 18, 1951.

In view of the foregoing, we are persuaded to conclude, much as we sympathize with the claim of the widow, that the Commission has no jurisdiction over the petitioner and, therefore, the present proceedings cannot continue and should be dismissed.

Petition is granted, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Parás, C. J., reserves his vote.

Petition granted.

[No. L-6305. October 25, 1954]

AGUSTIN GIL, plaintiff and appellant, *vs.* ROSA S. TALAÑA, ET AL., defendants and appellees

PLEADING AND PRACTICE; DISMISSAL OF ACTIONS; DISMISSAL WITH PREJUDICE DUE TO SHORT TARDINESS OF PLAINTIFF AND COUNSEL CONSTITUTES ABUSE OF DISCRETION OF COURT.—It is an abuse of discretion of the trial court to dismiss a case with prejudice just because plaintiff and his counsel arrived fifteen minutes late at the trial. It would be too drastic to make him suffer for such short tardiness.

APPEAL from an order of the Court of First Instance of Rizal. Tan, J.

The facts are stated in the opinion of the court.

F. G. J. Salva & C. de Leon, Jr. for plaintiff and appellant.

Pablo C. Payawal for defendants Rosa Talaña and Virginia Talaña.

Nemesio P. Libunao for the Philippine National Bank.

JUGO, *J.:*

The case was set for trial on July 18, 1951. Before that date the plaintiff had filed a motion for postponement for September, 1951. On July 18 the plaintiff and his counsel arrived fifteen minutes late at the trial and the case was dismissed by the court. One hour after the case had been called for trial, the attorney of the plaintiff filed a motion for reconsideration asking for its reinstatement. Said motion was denied in the following order:

"ORDER

"This is a motion for reconsideration dated July 18, 1951, presented by counsel for the plaintiff, based on the ground that the failure of the plaintiff and his counsel to appear on time when this case was called for hearing the last time was due to some excusable negligence.

"It appears in said motion on the third paragraph that the counsel for the plaintiff admits that he left the City of Pasay at 7:30 a.m., and therefore his failure to come to court on time is excusable. This could no longer be called excusable neglect. Said counsel should

know that from Pasay City to Quiapo, if he should take the regular bus, it takes about 16 minutes to negotiate the distance and from Quiapo to the Rizal Provincial Capitol, where the Court holds its session it takes from 35 to 40 minutes to negotiate that distance. If said counsel were to use a private car passing through Highway 54 from Pasay City to the provincial capitol, it will take from 14 to 17 minutes at a speed not to exceed 60 kilometers per hour to negotiate that distance if he uses any car of medium speed like the Chevrolet, the Ford or the Pontiac. And if counsel were to use a Buick or a Cadillac, the distance from the said provincial capitol to Pasay or from Pasay to the provincial capitol can be negotiated in not less than 12 minutes.

"*In view of the foregoing,* the motion for reconsideration dated July 16, 1951, is denied from the reason that the grounds alleged thereto are not sufficient to justify the failure of the plaintiff and his lawyer to appear on time in court when this case was last called for hearing.

"*It is so ordered.*

"Pasig, Rizal, July 21, 1951.

(Sgd.) BIENVENIDO A. TAN
Judge"

The plaintiff appealed to the Court of Appeals which certified the case to this Court for the reason that no questions of fact are raised.

It should be considered that the order dismissing the case does not say whether it is with or without prejudice, and, consequently, it is equivalent to a dismissal with prejudice (section 3, Rule 30).

In view of the fact that the plaintiff and his counsel were only about fifteen minutes late in arriving at the court, we believe that it constituted an abuse of discretion of the trial court to dismiss the case definitely. Sometimes a delay of a few minutes is unavoidable in trips such as that taken by the plaintiff in going to the court and it would be too drastic to make him suffer for such short tardiness.

In view of the foregoing, the order of dismissal of the complaint is set aside and the case is ordered returned to the trial court for further proceedings, without pronouncement as to costs.

So ordered.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Bautista Angelo, Concepcion and *J. B. L. Reyes, JJ.*, concur.

Order set aside.

[No. L-6317. October 25, 1954]

RUFO SALVADOR, plaintiff and appellant, *vs.* ISIDRO ROMERO, ET AL., defendants and appellees

1. PLEADING AND PRACTICE; POSTPONEMENTS, NOT SUBJECT TO AGREEMENT OF PARTIES.—The plaintiff should not assume that his motion for postponement will be necessarily granted by the trial court even though the defendants have given their con-

formity to the postponement. Hence, there is no excuse for his non-appearance at the trial on the date set, and if the trial court, dismisses his action, it commits on error.

2. EVIDENCE; JUDICIAL NOTICE.—The trial court can take judicial notice of decisions of the Court of Appeals which affect the case then pending.

APPEAL from an order of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Raya & Sadang for plaintiff and appellant.
Manuel A. Concordia for defendants and appellees.

JUGO, *J.:*

The Court of First Instance of Laguna issued an order on December 14, 1950, which reads as follows:

"ORDER

"Upon motion to set for trial of plaintiff, dated November 9, 1950, the above case was set for December 14, 1950 as shown from the notice of hearing of Nov. 22, 1950 and on the date set, Atty. Concordia for the defendant filed a motion for postponement to which Atty. Raya gave his conformity; alleging among other things that he failed to receive a copy of the notice. When this case was called for hearing today, both attorneys and parties failed to appear, and the Court finding that said petition to postpone to be without merit, the same is hereby denied. The Court also discovered that the property involved in the present case had already been the object of a final decision of the Court of Appeals in Civil Cases Nos. 9079 and 9080 of this same Court where the parties in said cases are the same parties in the above case as well as the cause of action, and for which this Court has no valid reason for a further postponement except an outright dismissal on the merits. The above case is therefore dismissed without special pronouncement as to costs.

"So ordered.

"Biñan, Laguna, December 14, 1950.

(Sgd.) NICASIO YATCO
Judge"

The plaintiff filed a motion for reconsideration of said order which was denied. He appealed to the Court of Appeals, but the case was transmitted to this Court on the ground that no questions of facts are raised.

The plaintiff-appellant should not have assumed that his motion for postponement would be necessarily granted by the court even though the defendants-appellees had given their conformity to the postponement. Hence, there was no excuse for his non-appearance at the trial on the date set.

It is not for the parties to postpone the trial of cases for it is the policy of the courts to expedite the dispossal of cases to prevent delay. The trial of cases should not be delayed, if possible, by motions for postponements even with the conformity of the adverse party. Attorneys should cooperate with the courts in the prompt trial of cases by refraining from the filing of motions for conti-

nuance unless there are sufficient and strong reasons for them.

The appellant lays stress on the fact that the court in its dismissal of the case mentioned certain cases of the Court of Appeals which constituted *res adjudicata* of the case then pending. The trial court did not err in doing so because it was the purpose of the court to see that, after all, no prejudice was caused to the plaintiff by the dismissal, as the case had already been finally decided and there was no substantial merit on the part of the plaintiff. The trial court could take judicial notice of the decisions of the Court of Appeals which affected the case then pending.

In view of the foregoing, the order appealed from is affirmed with costs against the appellant.

So ordered

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Order affirmed.

[No. L-5572. 26 October 1954]

PEDRO GUERRERO, petitioner, *vs.* SERAPION D. YÑIGO and THE COURT OF APPEALS, respondents

1. MORTGAGES; SALE WITH "PACTO DE RETRO" AND MORTGAGE DISTINGUISHED; "PACTUM COMMISSORIUM."—Except as to the period of five years from the date of the instrument within which the mortgagor may not redeem the property, the parties did not stipulate on a period after the five years within which the mortgagor may redeem it; and the parties stipulated that upon failure of the mortgagor to exercise the right of redemption, title thereto shall pass to and become vested absolutely upon in the mortgagees. *Held:* If the stipulation be construed as giving the mortgagees the right to own the property upon failure of the mortgagor to pay the loan on the stipulated time—which is not provided—that would be *pactum commissorium* which is unlawful and void. It is a conclusive proof that the instrument is a mortgage and not a sale with *pacto de retro*, because if it were the latter, title to the parcel of land would pass unto the vendee upon the execution of the sale.

2. SALES; SALE TO THIRD PERSON NOTWITHSTANDING THE UNDERTAKING OF MORTGAGOR TO SELL THE MORTGAGED PROPERTY TO THE MORTGAGEE IS VALID; UNDERTAKING TO SELL IS ONLY PERSONAL OBLIGATION AND DOES NOT BIND THE PROPERTY; ACTION FOR DAMAGES OR RESCISSION.—Although hte mortgagor undertook, bound and promised to sell the property mortgaged to the mortgagees in case he desires to sell it in the future, such undertaking, obligation or promise to sell does not bind the land. It is just a personal obligation of the mortgagor. The latter could validly sell the property to a third person and if there should be any action accruing to the mortgagee, it would be a personal action for damages against the mortgagor. If the vendee contributed to the breach of the contract by the mortgagor, the former together with the latter may

also be liable for damages; or if the vendee was guilty of fraud which would be a ground for rescission of the contract of sale in his favor, the mortgagor and not the mortgagee would be the party entitled to bring the action for annulment.

PETITION FOR REVIEW on certiorari of a judgment of the Court of Appeals dated 13, August 1951.

The facts are stated in the opinion of the court.

Lauro O. Sansano and *Epifanio Garcia* for petitioner.
Alfonso Espinosa for respondents.

PADILLA, *J.:*

This is a petition for a writ of certiorari to review the judgment of the Court of Appeals which reversed that of the Court of First Instance of Nueva Ecija (Civil No. 207). The last mentioned Court held that the plaintiff therein, now petitioner, is—

> * * * the legal owner of the western part of the land described in Certificate of Title No. 19251, Exhibit B, subject to a lien for ₱1,847.22 in favor of defendant Yñigo within the stipulated period mentioned in Exhibits 3, 4 and 5;

voided and annulled Exhibit 2, the deed of sale in favor of the defendants therein, the spouses Serapion D. Yñigo and Francisca D. Batañgan, as to the western half of the parcel of land described in the certificate of title above mentioned, and—

> * * * for the purpose of final adjudication of the corresponding half, plaintiff Guerrero and defendant Yñigo are hereby ordered to cause the measurement and subdivision of the property described in Certificate of Title No. 19251. Certificate of Title No. T-520 is ordered cancelled. With costs against defendant Catabona.

On appeal the Court of Appeals reversed the foregoing judgment of the Court of First Instance of Nueva Ecija and absolved the defendants from the complaint and declared them the absolute and exclusive owners of the parcel of land on the ground that the plaintiff therein, now the petitioner, was a purchaser in bad faith. The Court of Appeals further held that as the parcel of land was sold with *pacto de retro* and the corresponding deed was executed and registered prior to the purchase of one-half of the land by Guerrero from Catabona, Yñigo has a better right.

The Court of Appeals found the following:

* * * the defendant Amando Catabona who has been adjudged in default had been mortgaging the land described in the complaint, as follows:

> "A parcel of land, situated in Maranac, barrio of Baquiao, municipality of Guimba, bounded on the North by Maranac Creek; on the east, by property of Fernando Pimentel; on the south, by property of Casimiro de la Cruz; and on the west, by a creek and property of Engracio Pilapil. Containing an area of (175,041) square meters,"

in favor of Serapion Yñigo and his wife, Francisca D. Batañgan prior to March 2, 1944 when again he mortgaged it in favor of the same parties for the sum of ₱18,000 payable within five years from said date on condition, among others, "that should he desire to convey or sell in the future the above described land he promised to sell the same to the mortgagees for the sum of ₱18,000, and that the amount of the mortgage, to wit, ₱18,000, shall be treated as payment of one-half, or 87,520 square meters more or less, of the above described parcel of land covered by Transfer Certificate of Title No. 19251 of the land records of Nueva Ecija, and further warrants that he shall sell the said mentioned land to no other except to the said spouses and by virtue thereof shall give the latter the right to sue him for damages which they may incur plus reasonable attorney's fees." Said mortgage was duly registered in the Office of the Register of Deeds on March 18, 1944.

On April 20, 1944, Amando Catabona again secured a loan of ₱4,000 from Serapion Yñigo and his wife, and to insure payment thereof executed a second mortgage on the same parcel of land payable within two months after the expiration of five years from said date and subject to the same condition that should Catabona desire to sell the above described land he promised to sell the same to the same mortgagees, at the price of ₱2,000 per hectare and that should he sell it to others the mortgagees may sue him for damages, plus reasonable attorney's fees (Exhibit 4). Said mortgage was registered on the back of Transfer Certificate of Title No. 19251 on May 18, 1944.

On July 11, 1944, Catabona again mortgaged or sold the land to Serapion Yñigo and his wife for the sum of ₱5,000 on condition that should he fail to redeem the property after the period of five years by paying back and returning the above mentioned amount and the right of possession, and within the said period, title thereto shall pass to and become vested absolutely in the said spouses. Again the corresponding deed, Exhibit 5, was registered on the back of Transfer Certificate of Title No. 19251 on the same date, July 11, 1944.

On August 4, 1944, Catabona sold one-half of the same land and executed a deed of absolute sale in favor of Pedro L. Guerrero married to Consolación Silvestre for the sum of ₱90,000. Guerrero testified that Catabona offered to sell one-half of the land to him with the information that one-half of the land was mortgaged in favor of Atty. Yñigo and that he offered to sell the land to the mortgagees but the latter could not afford to pay the price he was asking for it. He then invited Catabona to see Yñigo and Serapion himself told Catabona that he could not afford to pay the high price that Catabona was asking. He asked Yñigo "How is it then, do you not resent if I buy the property?" to which Yñigo answered "I will not, *provided that the obligation to me is paid.*" (Italics supplied)

After the execution of the deed of sale, Exhibit A, and the payment Guerrero and Catabona went to see Yñigo but only found his wife to whom they talked about the matter. Mrs. Yñigo told them that her husband was in Manila and advised them to return upon his arrival. They again went to see Yñigo in September to pay the obligation and get the certificate of title but again failed to see him. Guerrero was not able to take possession of the land because Catabona requested him to allow him to plant palay until the harvest was over. Catabona, however, kept the land from 1944 up to 1947 on the pretext that because he was paid in Japanese war notes which were rendered worthless, he wanted to continue in possession of the land so as to be able to compensate his loss,

and since 1947 Yñigo has been the one in possession including the one-half portion involved which, according to Guerrero's compadre, Catabona, yields four (?) cavanes annually and that was the net share Catabona was to receive from the tenants.

On July 20, 1945 Atty. Lauro Sansano filed a petition for the surrender of the owner's duplicate of Transfer Certificate of Title No. 19251, Exhibit C, to which Atty. Espinosa, in behalf of Serapion Yñigo, filed an opposition, Exhibit C–1. On August 6 the petition was denied (Exhibit C–2). A motion to reconsider said order was again denied on September 26, 1945. On October 18, however, the order was reconsidered and Serapion Yñigo, the holder of Transfer Certificate of Title No. 19251, was ordered to surrender the same to the register of deeds for the registration of the sale above-mentioned subject to his preferential right.

On October 24 Exhibit A, the deed of sale in favor of Guerrero, and Exhibit B, the deed of partition entered into between Catabona and Guerrero whereby the eastern half of the land was adjudged to Catabona and the western half to Guerrero were presented to the Register of Deeds of Nueva Ecija for registration, but because of the failure of Guerrero to produce the owner's duplicate of the owner's copy of the corresponding Transfer Certificate of Title, the registration was not completed. Guerrero secured on October 24 the issuance of Tax Declaration No. 21868, Exhibit F, in his favor, for one-half of the land in question and paid the corresponding tax for the year 1946.

On November 16, 1946, Amando Catabona executed a deed of absolute sale of the land in question in favor of Yñigo for the sum of ₱6,000, Exhibit 2, which was presented for registration in the office of the Register of Deeds on November 18, 1946, as a result of which Transfer Certificate of Title No. T–520, Exhibit 1, was issued in favor of Yñigo married to Francisca D. Batañgan, subject to the *lis pendens* filed in connection with Civil Case No. 207 of the Court of First Instance of Nueva Ecija.

All the instruments attached to the complaint executed by Amando Catabona conveying the parcel of land, half of which is involved in this litigation, to the spouses Serapion D. Yñigo and Francisca D. Batañgan, the first for ₱18,000 executed on 2 March 1944 the second for ₱4,000 executed on 20 April 1944 and the third for ₱5,000 executed on 11 July 1944, are mortgages to secure the payment of the loans. It is true that in the last instrument the words "mortgage with conditional sale" were used and the follow- was stipulated:

> That the Party of the First Part, by these presents, reserves for himself and his heirs the right to redeem the said property after the period of five years from date hereof by paying back and returning the above-mentioned amount and the right of possession and use within the said period; and that on failure of the Party of the First Part to exercise the said right to redeem the said property according to the terms hereof, title thereto shall pass to and become vested, absolutely, in the Party of the Second Part.

The first clause was an attempt to stipulate the time when payment of the loan was to be made but except as to the period of five years from the date of the instrument within which the mortgagor may not redeem the property

there is no period after the five years within which the mortgagor may redeem it;[1] and if the second clause be construed as giving the mortgagees the right to own the property upon failure of the mortgagor to pay the loan on the stipulated time—which is not provided—that would be *pactum commissorium* which is unlawful and void.[2] The the clause is conclusive proof that it is a mortgage and not a sale with *pacto de retro* because if it were the latter title to the parcel of land would pass unto the vendee upon the execution of the sale and not later as stipulated that "title thereto shall pass to and become vested, absolutely, in the Party of the Second Part" "on failure of the Party of the First Part to exercise the said right to redeem the said property according to the terms hereof." Therefore, no sale of the parcel of land with the right to repurchase was made by Amando Catabona to the spouses Serapion D. Yñigo and Francisca D. Batañgan.

The registration of the three instruments created a real right in favor of the mortgagees. But the fact that in the instruments the mortgagor undertook, bound and promised to sell the parcel of land to the mortgagees, such undertaking, obligation or promise to sell the parcel of land to the mortgagees does not bind the land. It is just a personal obligation of the mortgagor. So that when Amando Catabona sold one-half of the parcel of land (the western part) on 4 August 1944 to Pedro Guerrero the sale was legal and valid. If there should be any action accruing to Yñigo it would be a personal action for damages against Catabona. If Guerrero contributed to the breach of the contract by Catabona, the former together with the latter may also be liable for damages. If Guerrero was guilty of fraud which would be a ground for rescission of the contract of sale in his favor, Catabona and not Yñigo would be the party entitled to bring the action for annulment.

The judgment of the Court of Appeals is reversed and the petitioner is declared the lawful owner of one-half of the parcel of land (the western part) described in transfer certificate of title No. 19251, subject to a mortgage to secure the payment of ₱1,847.22 [1] in favor of the spouses Serapion D. Yñigo and Francisca D. Batañgan payable

[1] Lack of stipulation as to such period may be supplied by the Court upon application (Article 1128, Old Civil Code or Article 1197, New Civil Code).

[2] Articles 1859 and 1884, Old Civil Code; 2088 and 2137, New Civil Code; Tan Chun Tic *vs.* West Coast Life Insurance Co. et al., 54 Phil., 361.

[1] This sum is a reduction of the several sums paid in Japanese war notes to the currency of the Republic made by the trial court as per Ballantyne schedule.

within such period of time as may be fixed by the Court upon petition, without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepción, and *J. B. L. Reyes, JJ.,* concur.

Judgment reversed.

[No. L-7079. October 26, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FRANCISCO V. BAUTISTA, MIGUEL PABALAN and ANTONIO B. RUBIO, defendants and appellants.

PUBLIC OFFICERS; MEMBERS OF MUNICIPAL POLICE CHARGED WITH RAPE; ACQUITTAL "IPSO FACTO" ENTITLES THEM TO REINSTATEMENT AND PAYMENT OF SALARIES DURING SUSPENSION.—Under section 4 of Republic Act No. 557, the acquittal of the defendants, members of the municipal police charged with rape, *ipso facto* entitles them to reinstatement and payment of their salary during suspension.

APPEAL from an order of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Eusebio V. Navarro and *Nicetas A. Suanes* for defendants and appellants.

Solicitor General Juan R. Liwag and *Solicitor Jose G. Bautista* for the plaintiff and appellee.

BENGZON, *J.:*

Charged with rape, Francisco V. Bautista, Miguel Pabalan and Antonio B. Rubio all of the police department of Calamba, Laguna, were absolved from liability by the Court of First Instance of Laguna. But in the dispositive part of his decision the judge said the following:

"*In view of the foregoing* the Court orders the dismissal of the above case and, in dismissing the case against the three accused herein, and notwithstanding the order of the Court of July 24, 1953, the said accused Francisco V. Bautista, Miguel Pabalan, and Antonio B. Rubio *should not be reinstated* to the service in the police department of Calamba, Laguna, and due to the above findings, *they are not entitled to any salary.*" (Italics supplied)

Although they had already been acquitted, the defendants appealed, in their desire to secure the elimination from the decision of those portions concerning their reinstatement and salary during suspension.

What happened was this: After the filing of the information Antonio B. Rubio married the offended party. Wherefore Rubio was excluded from the case. When the other two policemen were tried, the offended party turned a hostile witness, the prosecution collapsed, and the trial judge had to acquit. But suspecting some questionable maneuvers, he could not help expressing the opinion that

defendant policemen should not be reinstated nor paid any compensation during their suspension.

Obviously His Honor had in mind the provisions of section 2272 of the Revised Administrative Code:

"When a chief or member of the municipal police is accused in court of any felony or violation by the provincial fiscal, the mayor shrall immediately suspend the accused from office pending final decision of the case by the courts, and, *in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension if the court should so provide in its sentence*". (Italics supplied)

However, as the Solicitor General's office rightly admits, said section was modified by section 4 of Republic Act No. 557 which reads:

"When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal as the case may be, the provincial governor, the city mayor or municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, *in case of acquittal, the accused shall* be *entitled to payment of the entire salary he failed to receive during his suspension.*" (Italics supplied)

It is clear then that under the present law the defendants, after acquittal are *ipso facto* entitled to payment of their salary during suspension. As to reinstatement, it seems that the above section contemplates their automatic reinstatement too, because they are suspended only "pending the final decision of the case by the court".

Wherefore the pronouncements in the appealed decision regarding reinstatement and non-payment of salary were erroneous and unjustified. In so far as they prejudice the appellants they should be eliminated. It is so ordered. No costs.

Parás, C. J., Pablo, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.*, concur.

Pronouncements regarding reinstatement and non-payment of salary reversed.

[No. L-6295. Octubre 27, 1954]

WORLD WIDE INSURANCE AND SURETY CO., INC., recurrente, *contra* El Hon. FRANCISCO E. JOSE, ETC., Y OTRA, recurridos.

1. PRÁCTICA FORENSE; PARTES; MUERTE DE UNA DE LAS PARTES; PROCEDIMIENTO QUE DEBE SEGUIRSE.—Murió el demandado antes de la vista pero después de que haya presentado su contestación con una reconvención. La demanda era por el cobro de cantidades de dinero como daños sufridos por el alegado incumplimiento de parte del demandado de su obligación de entregar al demandante un millón de pies cúbicos de trozos de madera. Se ha sobreseido la acción contra el difunto demandado. Su fiador pide la reposición de la demanda. *Se declara:* Que de acuerdo

con el art. 17 de la Regla 3 y con otras disposiciones reglamentarias, el Juzgado no debía haber sobreseido la demanda; pero como ya lo había hecho, debía haber revocado la orden de sobreseimiento y ordenado la sustitución del finado por sus herederos, como pedía el fiador en su moción de reposición. Al sobreseer la demanda, el Juzgado no ha seguido las disposiciones del reglamento; por tanto, se excedió en su facultad o jurisdicción.

2. ID.; SOBRESEIMIENTO DE ACCIONES; RECONVENCION; NO DEBE SOBRESEERSE UN ASUNTO SI SE HA INTERPUESTO UNA RECONVENCION.—El poder del Juzgado para sobreseer una acción a petición del demandante no es puramente discrecional porque está regulado por el artículo 2 de la Regla 30. "Si se hubiese interpuesto una reconvención por un demandado antes de habérsele servido una copia de la moción del demandante pidiendo el sobreseimiento, la acción no será sobreseida contra la objeción del demandado, ..." Si la demanda se ha sobreseido y al pedirse la reposición de la misma se llamó la atención del Juzgado de que una reconvención había sido presentada por el demandado, era el tiempo oportuno para corregir ese error perjudicial.

3. OBLIGACIONES Y CONTRATOS; OBLIGACIONES MANCOMUNADAS; BENEFICIO DE EXCUSION.—Si la fianza fuese mancomunada y solidaria, cualquiera de los dos—la casa fiadora o el demandado—puede ser obligado judicialmente a pagar. Pero la responsabilidad solidaria no se presume: debe ser expresa (art. 1207, Cod. Civ. nuevo). La fianza que dió lugar al asunto no es solidaria: sólo dispone que si el obligado principal no cumple con los términos del contrato, el fiador responderá de los daños que no excederán de ₱30,000. ¿Como puede el demandante presentar pruebas de que el demandado no cumplió con los términos del contrato si la demanda contra él ha quedado ya sobreseida? El demandado y sus herederos deben tomar parte en la causa para capacitar al Juzgado a hacer pronunciamiento sobre el incumplimiento del contrato y responsabilidad consiguiente. Para evitar la multiplicidad de acciones, que es el propósito del actual Reglamento, es imperativo reponer la demanda.

ACCIÓN ORIGINAL en el Tribunal Supremo "Certiorari" con interdicto preliminar.

Los hechos aparecen relacionados en la opinión del Tribunal.

Bartolome I. Viola en representación del recurrente.
Francisco Lavides en representación del recurrido.

PABLO, *M.:*

La recurrente, una corporación doméstica, debidamente organizada de acuerdo con las leyes de Filipinas, con oficina principal en Manila, ha presentado el presente recurso alegando que:

1. En 29 de mayo de 1951, la General Lumber Co., Inc. presentó en el Juzgado de Primera Instancia de Manila una demanda (causa civil No. 13907), contra la recurrente y Rafael P. Belleza, alegando que éste había otorgado en 26 de febrero de 1951 un contrato para vender a la General Lumber Co., Inc. un millión de pies cúbicos de trozos; que al firmarse el contrato (cuyo cumplimiento fué garantizado

por la recurrente World Wide Insurance and Surety Co., Inc.), la General Lumber Co., Inc. entregó a Rafael P. Belleza un anticipo en efectivo de ₱20,000 y, a instancia de éste y en varias ocasiones, también se le adelantaron ₱23,000, habiéndosele entregado un total de ₱43,000: que cuando en 7 de mayo de 1951 el barco *Malay Maru II* (Yamashita Lines) arribó a Capalonga, Camarines Norte, para cargar, Rafael P. Belleza no tenía madera disponible; que, por la demora de cinco días sufrida por el barco, la General Lumber Co., Inc. sufrió daños por valor de ₱6,000, y, por haberse visto obligada a comprar trozos de otras personas a precio más alto que lo convenido con Belleza, sufrió daños montantes a ₱11,410, más ₱10,000 en concepto de honorarios de abogado, o sea, un total de ₱70,410;

2. En 18 de junio de 1951, la recurrente presentó su contestación a la demanda, alegando: (*a*) que ya había expirado el período de 45 días a contar desde el otorgamiento del contrato de venta de un millón de pies cúbicos de trozos convenido entre la demandante General Lumber Co., Inc., como compradora, y Rafael P. Belleza, como vendedor, sin que ni una ni otra parte hubiesen cumplido con los términos del contrato y que, trascurrido dicho plazo sin haberse efectuado el mismo, la obligaciónó a que respondía la fianza quedó *ipso facto* cancelada; (*b*) que la General Lumber Co., Inc. no cumplió con su obligación de enviar su barco dentro de los 45 días después de firmarse el contrato de venta para cargar trozos, porque el *Malay Maru II* (Yamashita Lines) llegó 52 días después de firmarse el contrato; (*c*) que cualesquier convenio o inteligencia que hayan tenido la General Lumber Co., Inc. y Rafael P. Belleza después de haber expirado el plazo de 45 días, no habían llegado a conocimiento de la recurrente y constituyen novación de contrato, y la recurrente no responde de su infracción.

3. En 30 de junio de 1951, Rafael P. Belleza presentó su contestación, alegando (a) que la General Lumber Co., Inc. no cumplió por su parte el contrato de venta al rehusar enviarle la cantidad necesaria para el impuesto forestal; (b) que por incumplimiento por la General Lumber Co., Inc. de los términos y condiciones del contrato, Belleza le notificó de la rescición del contrato; (c) que la General Lumber Co., Inc. no pagó el precio de los 600,000 pies cúbicos de trozos, con infracción del contrato, ocasionando dificultades a Belleza para poder continuar el corte de otros 400,000 pies cúbicos; (d) que el barco *Malay Maru II* (Yamashita Lines) rehusó cargar los 600,000 pies cúbicos; (e) que por mora de la General Lumber Co., Inc., Belleza sufrió daños en la cantidad de ₱75,000, y pidió, en reconvención, el pago de dicha cantidad;

4. Antes de celebrarse la vista de dicha causa, Rafael P. Belleza murió. En la vista, la demandante General

Lumber Co., Inc. pidió el sobreseimiento de la causa en cuanto a Rafael P. Belleza, fundándose en la Regla 3, artículo 21, a la que el Juzgado accedió en 13 de diciembre, quedando como sola demandada la World Wide Insurance and Surety Co., Inc.;

5. En 11 de junio de 1952, la recurrente presentó moción pidiendo que se repusiese la demanda contra Rafael P. Belleza, debiendo sustituir al finado su viuda Paz de Belleza e hijos, de acuerdo con el articulo 17 de la Regla 3. Contra dicha petición, la General Lumber Co., Inc. se opuso, y el Juez la denegó en su orden de 24 de julio. En 4 de agosto de 1952, la recurrente presentó moción de reconsideración que también fué denegada en 9 de septiembre.

6. La recurrente contiende que el Juzgado, al dictar sus órdenes de 13 de diciembre de 1951, 24 de julio y 9 de septiembre de 1952, había obrado sin jurisdicción o en exceso de ella o con grave abuso de discreción; que no existe ningún remedio fácil y expedito en el curso de los procedimientos. Pide que las citadas órdenes del Juez recurrido sean declaradas nulas.

En su contestación, los recurridos no niegan los hechos alegados en el recurso; pero sostienen que el Juez no abusó de su discreción al dictar sus órdenes impugnadas; que Rafael P. Belleza no es parte indispensable; por lo que piden que el recurso de certiorari sea denegado.

El artículo 2 de la Regla 30 dispone que "una acción no será sobreseida a instancia del demandante, excepto por orden del juzgado y en tales términos y condiciones que el Juzgado estime procedente. Si se hubiese interpuesto una reconvención por un demandado antes de habérsele servido una copia de la moción del demandante pidiendo el sobreseimiento, la acción no será sobreseída contra la objeción del demandado, * * *."

El poder del juzgado para sobreseer no es puramente discrecional porque está regulado por el artículo citado. En la causa en que se habían dictado las órdenes impugnadas, Belleza pa había presentado su reconvención de ₱70,000. Se podría arguir que no consta que el juzgado estaba impuesto de la reconvención cuando sobreseyó la demanda; pero este argumento pierde su furza cuando le recurrente al pedir la reposición de la demanda llamó la atención del juzgado de que una reconvención había sido presentada por Belleza: era el tiempo oportuno para corregir un error perjudicial.

Por otra parte, Belleza había fallecido ya. La Regla 3, articulo 17, dispone que "Cuando fallezca una de las partes sin que por ello se haya quedado extinguido la reclamación, el juzgado ordenará después de la debida notificación, que comparezca el representante legal del difunto, para que sustituya a éste, dentro del término de treinta días o del que el juzgado tenga a bien conceder. Si el representante legal deja de comparecer dentro de dicho tiempo, el juzgado po-

drá ordenar a la parte adversa que obtenga el nombramiento de un representante legal del difunto, dentro del período de tiempo que el juzgado señale al efecto, y dicho representante comparecerá inmediatamente por y en representación de los intereses del difunto. Los gastos judiciales incurridos para conseguir dicho nombramiento, si son sufragados por la parte adversa, podrán recobrarse como costas Podrá permitirse a los herederos del difunto a que sustituyan a este, sin requerir el nombramiento de un albacea o administrador, y el juzgado podrá nombrar un curador *ad litem* para los herederos menores de edad."

El juez, por tanto, de acuerdo con las reglas citadas, no debía haber sobreseído la demanda; pero como ya lo había hecho, debía haber recovado la orden de sobreseimiento y ordenado la sustitución del finado por sus herederos, como pedía la recurrente en su moción de reposición. Al sobreseer la demanda, el juzgado no ha seguido las disposiciones del reglamento; por tanto, se excedió en su facultad o jurisdicción.

Sobreseída la demanda en cuanto a Belleza, ¿podía ya ser condenada la recurrente, como fiadora, a pagar el importe de la fianza? Indudablemente que no. Quedó truncada la acción de la demandante. Si no se declara judicialmente responsable el obligado principal, cómo ha de responder el fiador? La responsabilidad de éste es subsidiaria: solamente responde si el obligado principal fuese condenado en sentencia firme y que se acredite por el Sheriff que es insolvente. No es suficiente que en el curso de los argumentos por la reposición de la demanda contra Belleza se diga que él es insolvente: hay que probarlo. No responde el fiador a menos que exista declaración judicial de que el principal ha infringido el contrato.

La General umber Co., Inc. reclama la rescisión del contrato, devolución de las cantidades anticipadas a Belleza y pago de daños y perjuicios por incumplimiento del contrato. Cómo puede la demandante probar esos hechos si Belleza ya no es parte en la causa? En el caso de que Belleza fuese condenado por haber infringido el contrato, eso no es base suficiente para que la recurrente, casa fiadora, responda del importe de la fianza, porque ella tiene el derecho de excusión. (Art 2058, Código Civil de Filipinas y art. 1830 del Código Civil antiguo.)

"Pero no es sólo la fianza una obligación accesoria dependiente de la principal, garantida por ella, sino que además se distingue por su cualidad subsidiaria y condicional, toda vez que no empieza la efectividad de la misma hasta el cumplimiento de la condición o la realización del hecho futuro e incierto de dejar de satisfacer su débito el principal obligado, * * *." (12 Manresao, 4.a ed., 140)

"Es indudable que el fiador, como garantizador de la obligación asegurada con la fianza, se constituye en segundo deudor de ella, y es encuentra en la misma condición que el primero respecto al acreedor; pero, esto no obstante, por ser subsidiaria su obligación, sólo puede venir obligado a su cumplimiento en el caso de absoluta imposibilidad

por parte del deudor para cumplirla. De este principio, base del precepto consignado en el artículo que examinamos, se deduce el beneficio antes citado, que consiste en el derecho del fiador para eludir el pago mientras no se haya hecho excusión de los bienes del deudor principal. * * *.

* * * * * * *

"Así lo declaró también el Tribunal Supremo, en sentencia de 2 de marzo de 1891, en la que se estableció la doctrina de que no procede que el acreedor demande al fiador, sin apurar antes todos los recursos legales respecto del deudor, y entre ellos el de pedir la rescición de la enajenación fraudulenta que éste hubiese realizado, y que, por reducirle a la insolvencia, hiciera imposible que pagase el débito.

"Esta sentencia y algunas otras que pudieran citarse y que sentaron la misma doctrina, antes y después de ser publicado el nuevo Cuerpo legal, determinan la extensión del beneficio mencionado, y, por lo tanto, no bastará para estimar agotado el procedimiento, y por terminada la excusión, la práctica de determinadas diligencias de investigación llevadas a cabo para la busca de bienes del deudor o para la justificación de su insolvencia, sino que hay que agotar los recursos legales contra el principal obligado, como dice la sentencia citada, siendo esta la verdadera inteligencia del presente artículo." (12 Manresa, 4.a ed., 227.)

Si la fianza fuese mancomunada y solidaria, cualquiera de los dos, la casa fiadora o Belleza, puede ser obligado judicialmente a pagar. Pero la responsabilidad solidaria no se presume: debe ser expresa. (Art. 1207, Código Civil nuevo.) La fianza que dió lugar al asunto no es solidaria: sólo dispone que si el obligado principal no cumple con los términos del contrato, el fiador responderá de los daños que no excederán de ₱30,000. Cómo puede la General Lumber Co., Inc. presentar pruebas de que Belleza no cumplió con los términos del contrato si la demanda contra él ha quedado ya sobreseida? Belleza o sus herederos deben tomar parte en la causa para capacitar al Juzgado a hacer pronunciamiento sobre el incumplicimiento de contrato y responsabilidad consiguiente.

"* * * la fianza es un contrato accesorio y la responsabilidad que contrae el fiador es subsidiaria. Por ella el fiador se obliga a pagar o a cumplir por un tercero, solamente en el caso de no hacerlo éste."

"* * *. Como simple fiadora que es, su obligación es subsidiaria y por no haberse constituido en fiadora solidaria tiene derecho a los beneficios de la excusión * * *." (Visayan Surety and Insurance Corporation contra Victoria G. de Laperal y otro, 40 Off. Gaz., (7th Supp.), 82.)

La recurrente no podría ejercitar su derecho de excusión a menos que hubiese pronunciamiento judicial sobre la responsabilidad de Belleza, ni podría repetir (Art. 2066 Código Civil de Filipinas y Artículo 1838 Código Civil antiguo) contra los bienes de éste a menos que promueva su intestado. Para evitar la multiplicidad de acciones que es el propósito del actual Reglamento, es imperativo reponer la demanda contra Belleza.

"ART. 7. *Inclusion obligatoria de partes indispensables.*—Las partes interesadas sin las cuales no puede haber una determinación final de una acción, deberán incluirse ya como demandantes o como demandadas." (Reglamento 3)

Se concede el remedio pedido con costas contra la General Lumber Co., Inc.

Parás, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion y J. B. L. Reyes, MM., estan conformes.

Se concede el recurso.

[No. L-7084. Octubre 27, 1954]

SMITH, BELL & CO., Ltd., recurrente, *contra* El REGISTRADOR DE TITULOS DE DAVAO, RECURRIDO

1. DERECHO CONSTITUCIONAL; EXTRANJEROS; SU DERECHO A ARRENDAR OBTENER EN ARRENDAMIENTO TERRENOS PRIVADOS.—Fundándose en el párrafo 6 del artículo 1491, relacionado con el artículo 1646 del Código Civil de Filipinas, algunos contienden que los extranjeros que no pueden comprar bienes inmuebles por disposición constitutional (Krivenko *contra* Director de Tereos, 44 Off. Gaz., 471) tampoco puden obtenerlos en arrendamiento. *Se declara:* Que el párrafo 6 del artículo 1491 no se refiere a todas las personas en general, nacionales o extranjeras, sino solamente a aquellas personas a quienes, por las relaciones especiales que tienen con los bienes, no debe permitírseles comprarlos. Y por eso dice. "Any other *specially* disqualified by law." Sila Constitución no prohibe el arrendamiento de terrenos públicos a ciudadanos extranjeros por que el Congreso va a prohibirles, por medio del Código Civil nuevo, el arrendamiento de los bienes inmuebles de la propiedad privada? Prohibir el arrendamiento de bienes inmuebles en Filipinas por extranjeros es impedir que sus dueños perciban el beneficio correspondiente.
2. REGISTRO DE TERRENOS; ES DEBER MINISTERIAL DEL REGISTRADOR DE TITULOS LA INSCRIPCION DE UN DOCUMENTO DE ARRENDAMIENTO. —El artículo 193 de la Ley No. 2711 y el artículo 57 de la Ley de Registro de Terrenos disponen que es deber del Registrador de Títulos inscribir todas las escrituras relativas a terrenos registrados cuando la ley exige o permite su registro. La obligación del Registrador de Títulos de inscribir tales contratos es ministerial.

ACCIÓN ORIGINAL en el Tribunal Supremo. Mandamus.

Los hechos aparecen relacionados en la opinión del Tribunal.

Sres. Ross, Selph, Carrascoso & Janda en representación del recurrente.

Sr. Patrocinio Vega-Quitain en su propia representación.

PABLO, *M.:*

La recurrente pide una orden perentoria contra el Registrador de Títulos de la ciudad de Davao para que registre el contrato de arrendamiento otorgado a su favor por la Atlantic Gulf & Pacific Co. of Manila.

Los hechos son los siguientes: La recurrente es una corporación extranjera, organizada de acuerdo con los leyes de Filipinas, con oficinas en Manila. En 9 de junio de 1953 la Atlantic, Gulf & Pacific Co. of Manila, una corporación organizada de acuerdo con las leyes de West Vir-

ginia, Estados Unidos de América, con licencia para negociar en Filipinas, dió en arrendamiento a la recurrente el lote No. 1241 del catastro de Davao. La claúsula de la escritura pertinente al caso es del tenor siguiente:

"2. That the term of this lease shall be twenty-five years from the date hereof, subject to renewal or extension for another twenty-five years, under such terms and conditions as the parties hereto may thereupon mutually agree. For the purposes of such renewal or extension, the LESSEE shall so convey in writing to the LESSOR at least ninety days before the expiration of the lease."

En 13 de julio del mismo año la recurrente, por medio de su abogado, presentó la escritura de arrendamiento para su inscripción al Registrador de Títulos de Davao, el cual expresó sus dudas acerca de la procedencia del registro, teniendo en cuenta la circular No. 139 de la Oficina General de Registro de Terrenos; y si la recurrente insistía en el registro, dicho registrador elevaría el asunto en consulta a la 4.ª sala del Juzgado de Primera Instancia de Manila. El abogado de la recurrente, creyendo que tardaría mucho tiempo una consulta al juzgado, acudió a la Oficina General de Registro de Terrenos, cuyo jefe, el Sr. Enrique Altavás, resolviendo la consulta, expidió el siguiente dictamen:

"With reference to your letter of the 13th instant, inquiring as to whether or not the Register of Deeds of Davao was justified in refusing the registration of the lease agreement over a parcel of land executed by Atlantic, Gulf & Pacific Co. (American owned) in favor of your client, Smith, Bell & Co., Ltd., an alien corporation, for a period of 25 years with option to renew for another 25 years, I have the honor to quote hereunder the dispositive portion of the resolution of the Court of First Instance of Manila, 4th Branch, to Consulta No. 136 of the Register of Deeds of Camarines Sur, as follows:

> 'After a careful study of the facts stated in the above-mentioned transcribed consulta, the undersigned is of the opinion that, until otherwise fixed by a superior authority, twenty-five years is a reasonable period of duration for the lease of a private agricultural land in favor of an alien qualified to acquire and hold such right, which has been recognized by the Supreme Court in its decision in the case of Krivenko *vs.* The Register of Deeds of Manila.'

"In view thereof, the Register of Deeds of Davao, was justified in refusing the registration of the aforesaid lease as it is in contravention of the said resolution of the Court which has been circularized to all Register of Deeds in our Circuar No. 139 dated May 6, 1952."

El jefe de la Oficina General de Registro de Terrenos funda su opinion en una circular del Secretario de Justicia, que en parte dice así: "since it is ownership by aliens which is prescribed, the test in determining the reasonableness of the period should be whether the lease in effect amounts to a conferment of dominion on the lessee" so that the period of the lease should not be of "such a duration as to vest in the lessee the possession and enjoyment of land with the permanency which proprietorship ordinarily gives."

Fundándose en el párrafo 6 del artículo 1491, relacionado con el artículo 1646 del Código Civil de Filipinas, algunos contienden que los extranjeros que no pueden comprar bienes inmuebles por disposición constitucional (Krivenko *contra* Director de Terrenos) tampoco pueden obtenerlos en arrendamiento. En nuestra opinión, la cotención carece de base por varias razones.

Para saber el alcance de estos tres artículos del nuevo Código Civil, investiguemos la razón por qué fueron adoptados. Dichos artículos dicen así:

"ART. 1646. The persons disqualified to buy referred to in articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein.

"ART. 1490. The husband and the wife cannot sell property to each other, except:

(1) When a separation of property was agreed upon *in*[1] *the marriage settlements;* or

(2) When there has been a judicial separation of property (in accordance with the provisions of Chapter VI, Title III, of this book) *under article 191.*

"ART. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(1) The guardian OR PROTUTOR, the property of the person or persons who may be under his guardianship;

(2) Agents, the property whose administration or sale may have been intrusted to them, *unless the consent of the principal has been given;*

(3) Executors *and administrators,* the property of the estate under administration;

(4) Public officers and employees, the property of the State or of any subdivision thereof, or *of any government owned or controlled corporation,* or of *Public* Institution, the administration of which has been intrusted to them; this provision shall apply to judges and *government* experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers (of such courts) *and employees connected with the administration of justice,* the property and rights in litigation *or levied upon an execution* before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

[1] Las líneassubrayadas son adiciones al Código Civil antiguo, las que están entre paréntesis son las sustituídas y las que están en letras mayúsculas son las partes suprimidas.

Actions between co-heirs concerning the hereditary property, assignment in payment of debts, or to secure the property of such persons, shall be excluded from this rule.

(6) *Any others specially disqualified by law.*

¿Por qué no se prohibe la venta de bienes entre marido y mujer? Para impedir el fraude: evitar la simulación de venta, o que se ejerza indibida influencia en el otorgamiento de la misma en perjuicio de terceros.

La prohibición de los cinco casos del artículo 1491 se funda en principios de moralidad: El tutor, albacea o administrador no debe aprovecharse de la confianza depositada en él, comprando los bienes de la tutela, del albaceazgo o de la administración. Los agentes no deben tomar ventaja de su relación fiduciaria con el mandante, adquiriendo en compra la propiedad del mandante, a menos que éste lo haya consentido. Los funcionarios públicos no deben aprovecharse de las ventajas que les proporciona su cargo para comprar los bienes confiados a ellos para beneficio del público. Los magistrados, jueces, fiscales, escribanos y otros empleados relacionados con la administración de justicia tampoco deben hacer uso indebido de su cargo para adquirir los terrenos en litigio en su respectiva jurisdicción.

¿Se refiere el párrafo 6 del artículo 1491 a todas las personas y a todos los bienes en general, o solamente a ciertas personas que tienen relación fideicomisaria con los bienes cuya adquisición por compra se prohibe? Creemos que no se refiere a todas las personas en general, nacionales o extranjeros, sino solamente a aquellas personas a quienes, por las relaciones especiales que tienen con los bienes, no debe permitírseles comprarlos. Y por eso dice: "Any others *specially* disqualified by law."

"It is a general rule of statutory construction that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specially mentioned.

"This rule is commonly called the 'ejusdem generis' rule, because it teaches us that broad and comprehensive expressions in an act, such as 'and all others,' or 'any others,' are usually to be restricted to persons or things 'of the same kind' or class with those specially named in the preceding words. It is of very frequent use and application in the interpretion of statutes.

"Illustrations and applications

"The rule of 'ejusdem generis' is properly applied to a statute exempting from taxation certain enumerated kinds of property and 'other articles,' the general term being strictly confined to the similitude of those specifically named." (Black on Interpretation of Laws, 2nd Ed., 203.)

Por eso el artículo 1646 dice que las personas descualificadas para comprar de acuerdo con los articulos 1490 y 1491 están también inhabilitadas para obtener en arrendamiento

las cosas mencionadas allí (of the things mentioned therein).

Los miembros de la Comisión Codificadora y del Congreso saben al dedillo la prohibición constitucional y el asunto de Krivenko. Si su intención hubiera sido prohibir el arrendamiento a las personas descualificadas para comprar terrenos, el artículo 1646 se hubiese redactado en esta forma: "The persons disqualified to buy agricultural lands, according to the Constitution, are also disqualified to become lesses of the same."

¿Por qué se adoptó el artículo 1646? Por la analogía que existe entre el contrato de venta y el de arrendamiento: Se transmite en el uno el dominio y en el otro el goce o uso de la cosa. Es verdad que hay similitud entre uno y otro; pero es sólo aparente, superficial. El arrendatario tiene al parecer los mismos derechos que el dueño; pero entre uno y otro existe una diferencia muy importante, sustancial, en cuanto al dominio. E arrendador no tiene la posesión de la cosa, pero conserva la propiedad, el dominio; el arrendatario goza del uso del inmueble nada más: no ejerce el derecho dominical.

El extranjero que compra un terreno se hace dueño, ejerce dominio sobre el mismo; pero el que obtiene arrendamiento no consigue más que la posesión o uso del terreno; no existe el peligro de que un arrendatario se convierta en dueño del terreno; el dominio lo conserva el arrendador. Un arrendamiento por cincuenta años no concede posesión permanente que ponga en peligro la seguridad del territorio; la posesión sólo tiene la duración estipulada por medio del contrato.

La base sobre que descansa la prohibición constitucional de venta a extranjeros es la necesidad de conservar el dominio sobre el patrimonio nacional; la Asamblea Constituyente queria retener en manos de los nacionales el dominio sobre los terrenos de propiedad privada para no poner en peligro la integridad de la nación. Imagínese por un momento la situación de Filipinas si el 70 por ciento de la propiedad inmueble estuviera bajo el dominio de los extranjeros. Parte de la población tendría que remontarse o vivir en balsas sobre los inmundos esteros, lagos o mares. Habría una población flotante como en Hongkong. Los naturales en dicha colonia, en vez de vivir en casas, nacen, viven y mueren en "sampanes"; por falta de alberque, muchos duermen tiritando de frío en las aceras de edificios extranjeros. La isla era de los chinos; pero hoy, apenas se puede contar con los dedos a los chinos que conservan dominio sobre terrenos. Mientras los extranjeros prosperan y viven en la abundancia, los naturales se arrastran en la miseria, ni siquiera tienen un palmo de tierra en donde caer muertos. Ofuscados por el brillo del oro, se desprendieron de sus terrenos sin percatarse de que más tarde las

monedas se escaparían de sus manos como aves de paso. Y todo porque no han tenido la previsión de conservar la propiedad bajo su dominio.

Prohibir el arrendamiento de bienes inmuebles en Filipinas por extranjeros es impedir que sus dueños perciban el beneficio correspondiente. No tenemos stadísticas a la vista; pero no es exagerado decir que más de un 50 por ciento de las fincas comerciales en las ciudades de Filipinas están, mediante arrendamiento, ocupadas por extranjeros. Si se prohibiera el arrendamiento de inmuebles a extranjeros, quedarían vacantes muchos. No es dificil calcular el daño que causaría tal prohibición. El artículo 1, Título XIII de la Constitución, dispone:

"Pertenecen al Estado todos los terrenos agrículas, madereros y mineros del dominio público, las aguas, los minerales, el carbon, el petróleo y otros aceites minerales, todas las fuentes de energía potencial y cualesquiera otros recursos naturales de Filipinas; y su disposición, explotación, desarrollo o aprovechamiento se limitarán a los ciudadanos filipinos, o a las corporaciones o asociaciones, de cuyo capital, en un sesenta por ciento, por lo menos, fueren dueños dichos ciudadanos, con sujeción a cualesquier derecho, privilegio, arrendamiento o concesión que existieren respecto a dichos recursos naturales en la fecha de la inauguración del Gobierno que se establece bajo esta Constitución. Con excepción de los terrenos agrícolas del dominio público, no serán enajenados los recursos naturales, y no se otorgará ninguna licencia, concesión o arrendamiento para la explotación, desarrollo o aprovechamiento de cualesquiera recursos naturales, por un período mayor de veinticinco años, prorrogable por otros veinticinco, excepto en cuanto al aprovechamiento de aguas para fines de riego, abastecimiento, o para pesquerías u otros usos industriales, que no sean la producción de energía, respecto a los cuales el uso provechoso podrá ser la medida y el límite de la concesión."

Si la Constitución no prohibe el arrendamiento de terrenos públicos a ciudadanos extranjeros ¿por qué el Congreso va a prohibirles, por medio del Código Civil nuevo, el arrendamiento de los bienes de la propiedad privada? ¿Para que los propietarios no reciban la renta de sus fincas? El arrendamiento de terrenos públicos fomenta su desarrollo y los mejora. Si se limitase su arrendamiento solamente a los naturales, la mejora sería lenta. Tenemos un ejemplo: El área ganada al mar (Port Area) de Manila y Cebú se da en arrendamiento a cualquiera persona por 99 años, y al expirar el plazo, toda la mejora se convierte en propiedad del Estado. Con este sistema de arrendamiento muchas mejoras se han hecho en el área y al cabo del término ganará el gobierno las mejoras hechas sin invertir un solo céntimo. Otro: En la ciudad de Cebú, los extranjeros construyen edificios de concreto en lotes arrendados y al cabo de diez años las mejoras se convierten en propiedad de los dueños de dichos lotes. De suponer es que los congresistas y senadores cebuanos en particular y los miembros del Congreso en general tenían conocimiento de todo esto; el Congreso no podía haber prohibido el arrendamiento a extranjeros de bienes inmuebles. Ello retarda-

ría la mejora del área ganada al mar y de los terrenos de propiedad privada en Cebú, una ciudad completamente arrasada por la última guerra.

En Zamboanga, Cagayán de Oro y Davao existen también espacios (para pier) disponibles para arrendamiento.

El contrato de venta o arrendamiento de terreno con título Torrens no obliga a terceras personas, a menos que esté inscrito; sólo obliga a las partes contratantes. Por eso, como medida de precaución, se ordena su inscripción.

El artículo 193 de la Ley No. 2711 y el artículo 57 de la Ley de Registro de Terrenos, disponen que es deber del Registrador de Títulos inscribir todas las escrituras relativas a terrenos registrados cuando la ley exige o permite su registro. La obligación del Registrador de Titulos de inscribir un contrato de arrendamiento es ministerial. (67 Phil., 222.)

Y por último, el artículo 1643 del Código Civil de Filipinas dispone en arte lo siguiente: "* * * However, *no lease for more than ninety-nine years shall be valid.*"

El contrato, cuyo registro es hoy objeto de litigio, solamente dura 25 años, prorrogable en otros 25: no llega a 99 años. Por tanto, está de acuerdo con la ley, es válido: solamente es nulo el arrendamiento por más de 99 años.

Se ordena al Registrador de Títulos de la ciudad de Davao que registre el contrato de arrendamiento otorgado por la Atlantic, Gulf & Pacific Co. a favor de la recurrente.

Bengzon, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, M.M.,* conformes.

Padilla and *Montemayor, JJ.,* concur in the result.

PARAS, *C.J., concurring:*

In the case of Alexander A. Krivenko *vs.* Register of Deeds, City of Manila, 44 Off. Gaz., (2) 471, this court (at least the majority) held that aliens are disqualified from acquiring private agricultural land which includes private residential land. This ruling was based on section 5 of Article XIII of the Constitution, providing that "save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

Article 1646 of the new Civil Code provides that the persons disqualified to buy referred in articles 1490 and 1491 are also disqualified to become lessees of the things mentioned therein; and article 1491, paragraph (6), disqualifies from acquiring by purchase, in addition to the persons enumerated in paragraphs (1) to (5) thereof, "any others specially disqualified by law." In the case at bar, the petitioner, an alien corporation, seeks to register a lease in its favor of a lot in Davao. Applied strictly, paragraph (6) of article 1491 may easily refer to all per-

sons in general, who are disqualified by any law, and not merely to those who have confidential relations with the property to be purchased. If paragraph (6) sumply provides "and others," the principle of *ejusdem generis* would apply. As the petitioner is disqualified from acquiring private agricultural land (which includes residential land) not only by a law but by the Constitution which is more than a law, it cannot hold in lease the lot in question. Even so, I concur in this decision, because it in effect is in conformity with my dissent in the Krivenko case.

Se concede el recurso.

[No. L-6491. October 29, 1954]

LAKAS ÑG PAGKAKAISA SA PETER PAUL, petitioner, *vs* COURT OF INDUSTRIAL RELATIONS and PETER PAUL (PHILIPPINES) CORPORATION, respondents.

1. EMPLOYER AND EMPLOYEE; LABORERS LAID OFF BY AUTHORITY OF THE COURT OF INDUSTRIAL RELATIONS, WHEN ENTITLED TO REINSTATEMENT.—The respondent corporation was granted by the Court of Industrial Relations authority to lay off some of its employees subject to the condition that "in the event that the company needs more workers because of increased production, those laid off shall have first priority over a new man." After the lay-off of its 58 laborers, the respondent corporation adopted the practice of permitting its regular laborers to select and have "helpers" to assist in their work, although the Company delivered the corresponding compensation to the regular employees and left the sharing thereof entirely to them and their helpers, the latter not being carried in the Company payroll. *Held:* The practice of allowing "helpers" for the regular laborers reveals that the production needs of the respondent Company required a higher number of laborers than that remaining in its employ after the lay-off and plainly violates the condition imposed in authorizing the lay-off, to the prejudice of the workers laid off who have priority in reemployment rights.
2. ID.; ID.; "MESADA"; ONLY EMPLOYEES NOT GIVEN ONE MONTH'S PREVIOUS NOTICE ARE ENTITLED TO "MESADA".—Article 302 of the Code of Commerce requires the payment of *mesada* only to employees dismissed without one month's previous notice.
3. COURT OF INDUSTRIAL RELATIONS; ITS FAILURE TO CONSIDER FACTS ON RECORD JUSTIFIES THE INTERPOSITION OF CORRECTIVE POWERS OF SUPREME COURT.—The failure of the Court of Industrial Relations to consider the facts on record justifies the interposition of the corrective powers of the Supreme Court. (Ang Tibay *vs.* Court of Industrial Relations and National Labor Union, 69 Phil., 635).
4. EMPLOYER AND EMPLOYEE; WHAT IS NOT SERIOUS DISRESPECT TO THE EMPLOYER UNDER ARTICLE 300 OF THE CODE OF COMMERCE.—The simple refusal of the employee to comply with notices to report to the main office does not, in the absence of special reasons, make him guilty of such want of respect for the employer as would warrant summary and outright dismissal without notice or severance pay.

REVIEW on certiorari of an order of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Carlos E. Santiago for petitioner.

Emiliano C. Tabigne for the respondent Court of Industrial Relations.

Gibbs & Chuidian for the respondent Peter Paul (Philippines) Corporation.

REYES, J. B. L., *J.:*

This is a petition filed by the labor union "Lakas ng Pagkakaisa sa Peter Paul" for the review of an order of the Court of Industrial Relations dismissing its petition (Case No. 405–V[3]) for the reinstatement of 58 of its members laid off by the respondent Peter Paul (Philippines) Corporation, and of the Court *a quo's* resolution *in banc* denying the petitioner Union's motion for reconsideration.

Said Case No. 405–V(3) arose as an offshoot of C. I. R. Cases Nos. 405–V (1) and 405–V (2), wherein the respondent corporation was granted by the lower Court authority to lay off 319 of its employees and laborers because of the introduction of mechanical improvements in the corporation's factory and the decrease in the demand for its manufactured products, the corporation "to commence its lay-off effective upon receipt of the order authorizing the same". The petitioner union moved to reconsider the order on the ground that the conditions imposed therein were onerous and the number of the laborers authorized to be laid off was excessive; but before this motion was resolved, the respondent corporation had already served notice to 55 laborers that they would be laid off on September 3, 1950. The Union filed an urgent petition (Case No. 405–V[3]) to enjoin the lay-off, but as no injunction was issued and the respondent company had actually dismissed 58 laborers, the petitioner union amended its petition, praying for the reinstatement of the 55 laborers laid off by the company on September 3, 1950, and of 3 other employees (Antero Barrion, Florentino Bunga, and Norberto Hernandez) laid off on August 3, 1950. In the meantime, the lower Court, acting upon the union's motion to reconsider its order in Case No. 405–V (2) authorizing the lay-off, issued a resolution modifying said order by reducing the number of laborers authorized to be laid off to only 55 men.

Trial on the petition for reinstatement of the 58 laid off laborers and employees was then had, after which the Court *a quo* issued on September 27, 1952 an order dismissing the petition (Annex "E" of the Petition for Review). The Union moved for the reconsideration of the order, but said motion was, on October 14, 1952 (Annex "F" of this Petition) likewise denied by the lower Court *in banc* (with two Judges dissenting). The Union then appealed to this Court.

Two arguments are relied upon in support of the appeal, to wit:

(1) That the respondent Court abused its discretion in ignoring oral and documentary evidence showing that the respondent corporation, after laying off 58 laborers, hired more "extras" and "helpers", which shows that the dismissal of said 55 men left a void which must be filled to supply normal labor requirements; and

(2) That the respondent Court erred in holding that Article 302 of the Code of Commerce, providing for the payment of one month's salary to employees who are dismissed without a month's notice, has been expressly repealed by the New Civil Code.

In disposing of the contention of the petitioner labor Union that the evidence showed that for the two months prior to the lay off on September 3, 1950, the respondent company hired 293 extra laborers, while two months after the lay-off, the company actually hired and employed 373 extras (or an increase of 80), this Court must abide by the finding of the majority of the Judges of the Court of Industrial Relations that, on the basis of the evidence, the hiring of more extra employees after the lay-off was made only as an emergency measure to ensure continuity in the tasks of absent regular employees, so that said hiring of "extras" did not justify the reinstatement of the employees who had been laid off.

While the number of extras hired by the respondent company had increased after the lay-off, the respondent corporation has shown (without successful contradiction) that such increase was due to a corresponding increase in the absences of regular employees after the lay-off, that the corporation attributed to the fact that more employees did not report for work due to fear of violence in some form or another during the period immediately following the lay-off (t. s. n. pp. 111–114, July 11, 1951).

However, the resolutions of the Court of Industrial Relations now under review make no mention of the established fact that, after the lay-off of the 58 laborers in September 3, 1950, the respondent company in April, 1951, adopted the practice of permitting its regular laborers to select and have "helpers" (other than extra workers previously mentioned) to assist in their work, although the Company delivered the corresponding compensation to the regular employees and left the sharing thereof entirely to them and their helpers, the latter not being carried in the Company payroll. This practice plainly reveals that the production needs of the respondent Company since April, 1951 required a higher number of laborers than that remaining in its employ after the lay-off subject of these proceedings, and supports the position of the

petitioner Union that the dismissed laborers should be reinstated. One of the conditions expressly imposed by the respondent Court of Industrial Relations in its order of July 11, 1950, authorizing the lay-off of the laborers, was that—

"In the event that the company needs more workers because of increased production, those *laid off shall have first priority over a new man*".

That the practice of allowing "helpers" for the regular laborers practically doubled the labor force of the Peter Paul Corporation is clear, and plainly violates the condition above quoted to the prejudice of the workers laid off, who had priority in reemployment rights. It is no answer that these "helpers" were not carried in the company's payroll, for that is too transparent an excuse to hide the fact that these helpers supplied the labor needs of the company to maintain or increase its production. To hold it as a valid excuse would enable the employer to disregard at will the reemployment conditions imposed upon and accepted by it.

The failure of the Court of Industrial Relations to consider the facts on record concerning these "helpers", is an infringement of cardinal primary rights of the petitioner, and justifies the interposition of the corrective powers of this Court (Ang Tibay *vs.* Court of Industrial Relations and National Labor Union, 69 Phil., 635).

"(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan *vs.* U. S. 298 U. S. 468, 56 S. Ct. 906, 80 Law, Ed. 1288.) In the language of this Court in Edwards *vs.* McCoy, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'"

For the foregoing reasons, we find that the Court *a quo* abused its discretion in evaluating the evidence before it and in dismissing the union's petition for the reinstatement of its members laid off by the respondent Company.

The second question raised in this petition for review is the alleged erroneous conclusion of law made by the Court below that Art. 302 of the Code of Commerce has been expressly repealed by the new Civil Code. We see no practical need to decide this question squarely, for the reason that even assuming that the New Civil Code has not repealed Art 302 of the Code of Commerce, as insisted by the appellant Union, the 55 employees laid off by the respondent Company on September 3, 1950 would not be entitled to the payment of one month severance pay anyway, because the Court below expressly found that they were

given one month's notice before they were dismissed, and Art. 302 of the Code of Commerce requires the payment of the *mesada* only to employees dismissed without such previous notice.

Now, with respect to the cases of Antero Barrion, Florentino Bunga, and Norberto Hernandez, who were dismissed on August 3, 1950 without one month's previous notice, their claims for separation pay were denied by the Court below on the ground that they were guilty of serious want of respect for and regard to their employer, on the basis of the following findings:

"On August 2, 1950, Barrion, Bunga and Hernandez were asked by the factory manager to report to the personnel office of the Company. Three separate and consecutive notices were sent to these employees on that day through Anacleto Orioque, Shift foreman, Pastor Dalmacion, Mill Superintendent, and Federico Dioso, Personnel Supervisor (t. s. n. pp. 14–19, 30–33, February 19, 1952; pp. 32–34, March 5, 1952). Barrion, Bunga and Hernandez admitted they refused to report to the office although they were not advised at the time the reason they were asked to report (t. s. n. pp. 30–31, 45, 53, August 3, 1951). There is no showing that the order was for an unlawful purpose. Their refusal, therefore, was a serious want of respect and regard to their employer and a lawful ground for their immediate dismissal (Art. 300, par. 3, Code of Commerce; Puerto *vs.* Gregg Car Co., C. A.-G. R. No. 5620, September 30, 1940)."

We are constrained to disagree with the conclusion of the lower Court that the simple refusal of Barrion, Bunga and Hernandez to comply with three notices to report to the office of the respondent corporation amounted to serious want of respect and regard for their employer. It should be borne in mind that the names of these employees were included in the general notice of the lay-off posted by the company on its bulletin board on August 3, 1950 (Exhibit 1–A); and it is quite likely that these employees did not report at the company's office as required because they suspected that they were to be interviewed only for the purpose of receiving verbal confirmation of the posted notice that they were to lose their jobs in a month's time. In the absence of showing that the employer had some other purpose in asking them to report, we do not think these employees are guilty of such want of respect for their employer as would warrant their summary and outright dismissal without the right to either 30 days notice or severance pay.

Wherefore, reversing the orders of the respondent Court of Industrial Relations dated September 27, 1952 as well as the confirmatory resolution *in banc* of December 5, 1952, in so far as material to this appeal, the respondent Peter Paul (Philippines) Corporation is ordered (1) to pay Antero Barrion, Florentino Bunga, and Norberto Hernandez severance pay equivalent to thirty days' wages;

(2) to reinstate the 58 laborers laid off on September 3, 1950, without back wages; and (3) to pay the costs of the proceedings.

Parás, C. J., Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, and *Concepcion, JJ.*, concur.

Order reversed.

[No. L-5767. October 30, 1954]

THE TESTAMENT of the Late PLACIDA MINA; CRISANTO UMIPIG, et als., petitioners. ATTY. JESUS Q. QUINTILLAN, claimant and appellee, *vs.* LAZARO DEGALA, GERMANA ESCOBAR, GREGORIO GUERZON, TEODORO FELIE, CRISTINA GUERZON, BOLONIA TAMAYO, LEONA LEONES, SIMONA MENDOZA, ISABEL DIRECTO, PLACIDA DIRECTO, ANDRES DIRECTO, PETRA DIRECTO, PAULA DIRECTO, and CLARO QUEBRAL, oppositors and appellants.

1. TESTAMENTARY PROCEEDINGS; CLAIMS AGAINST ESTATE; MONEY CLAIMS AGAINST DECEDENT ARISING FROM CONTRACT REFER TO CLAIMS UPON A LIABILITY CONTRACTED BEFORE HIS DEATH.—Section 5 of Rule 87, partly providing that all money claims against the decedent arising from contract, express or implied, must be filed within the time limited in the notice, generally refer to claims upon a liability contracted by the decedent before his death.
2. ID.; ATTORNEY'S FEES; ALLOWANCE OF ATTORNEY'S FEES IN PROBATE PROCEEDINGS RESTS LARGELY IN THE SOUND DISCRETION OF THE COURT.—The allowance of attorney's fees in probate proceedings rests largely in the sound discretion of the trial court, which should not be interfered with except in case of manifest abuse.
3. ID.; ID.; FACTORS TO BE CONSIDERED TO DETERMINE COMPENSATION FOR LEGAL SERVICES.—To determine the compensation for legal services, in the absence of contract, several factors should be taken into account, namely, (1) amount and character of the services rendered; (2) labor, time, and trouble involved; (3) nature and importance of the litigation or business in which the services were rendered; (4) responsibility imposed; (5) amount of money or value of the property affected by the controversy, or involved in the employment; (6) skill and experience called for in the performance of the services; (7) professional character and social standing of the attorney; (8) results secured; and (9) whether or not the fee is absolute or contingent.

APPEAL from an order of the Court of First Instance of Ilocos Sur. Campos, *J.*

The facts are stated in the opinion of the court.

Antonio Directo for oppositors and appellants.
F. V. Vergara for claimant and appellee.

BENGZON, *J.:*

This is an appeal from the order of the Court of First Instance of Ilocos Sur awarding to Jesus Quintillan the sum of ₱50,000 as attorney's fees payable by the estate of the late Placida Mina.

After the death of said woman in July 1939, three separate proceedings were instituted to probate three different instruments alleged to be her duly executed wills. The first was Civil Case No. 3685 filed by Dr. Eufemio Domingo; the second, Civil Case No. 3686 filed by Joaquin Escobar; and the third, this Civil Case No. 3689 instituted by Crisanto Umipig, Marieta Quintillan, Roberto A. Desierto and Cecilia Reyes, who are four out of six trustees and children of trustees designated in the will of Placida Mina. The court found this third document to be the true testament of the deceased.

These trustees successfully opposed the probate of the first two documents alleged to be wills in the two previous cases Nos. 3685 and 3686 They were represented in all the three cases by Attorney Jesus Quintillan pursuant to their contract Annex A–1 reading as follows:

"We, Roberto A. Desierto, Cecilia Reyes, Crisanto Umipig and Marieta F. Quintillan, declare the fact that because we desire to oppose the probate of the will sought to be probated by Dr. Eufemio Domingo, and the will sought to be probated by Mr. Joaquin Escobar, who claim that such testaments they are respectively presenting are the true wills of the late Doña Placida Mina, and because the will we desire to be probated is the true will of the late Doña Placida Mina dated the year 1927, we made an agreement with Atty. J. Q. Quintillan that he be our lawyer in all said cases and we promise him that if he can succeed in not allowing the wills presented by said Dr. Eufemio Domingo and Mr. Joaquin Escobar to probate, and in obtaining the probate of the will of Doña Placida Mina dated the year 1927, we will give to the said Atty. J. Q. Quintillan as his fees 30 per cent of the entire estate left by the deceased Placida Mina, and it was agreed that the said attorney shall be responsible for all necessary expenses in these cases. In the event that no result shall be obtained in his attending us in said cases, we shall not be under any obligation to him for expenses incurred by him and for his attorney's fees."

Having performed his part and obtained the probate of the will, Attorney Quintillan submitted his claim for professional services in this expediente. He requested payment of ₱150,000 (30 per cent) asserting that the entire estate of Placida Mina actually was worth more than half-a-million pesos.

Leona Leones and Cipriano Alcantara, two other trustees of the authentic will, opposed the request. Attorney Antonio Directo for the heirs, likewise objected. Subsequently, however, all the heirs and parties interested in the estate subscribed to a stipulation, the pertinent part of which read:

"(*g*) That the parties recognize that Atty. Jesus Q. Quintillan is entitled to certain attorney's fees for services rendered in the testamentary proceedings of Placida Mina and for other services rendered for which he filed a claim thereof, but it is understood that the court shall decide the reasonableness of such attorney's fees and whatever sum the court will adjudicate the same shall constitute a charge as expenses of administration in the testamentary proceedings of Placida Mina, Civil Case No. 3689, and the Intestate Estate

of Placida Mina, Civil Case No. 3945, both of the Court of First Instance of Ilocos Sur."

Pursuant to said stipulation the court proceeded to determine the reasonable amount payable to Atty. Quintillan, adjudging to him the sum "of ₱50,000 as his attorney's fees, and the Court orders that the part of this amount has not yet been collected by Atty. Quintillan be paid to him by the estate of the late Placida Mina, said amount to constitute a charge as expenses of administration in the testamentary proceedings."

The heirs appealed directly to this Court. Their brief assigns several errors in support of their two principal contentions, to wit, (*a*) the lower court lacked jurisdiction to make the award because the claim had not been presented in time and (*b*) the reasonable compensation should be around ₱7,000 only.

Inasmuch as the amount involved *does not exceed* ₱50,000 this appeal would not be properly here, except for the jurisdictional issue tendered by appellants. They point out that the court's directive requiring all money claims against the deceased Placida Mina to be submitted within six months was published July 3, 1950 and the period expired January 3, 1951. They argue that Quintillan's claim having been filed April 21, 1951, was belated and the court had no jurisdiction to act thereon. They invoke section 5 of Rule 87 partly providing as follows:

"All claims for money against the decedent arising from contract, express or implied, whether the same be due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent must be filed within the time limited in the notice or *otherwise they are barred forever.*" (Underscoring by appellants.)

Upon careful examination we find their argument to have no juridical basis. The section refers obviously to claims "against the decedent arising from contract" with her. It applies to demands "which are proper against the decedent, that is, claims upon a liability contracted by the decedent before his death" * * * "except funeral expenses" etc.[1]

Anyway the judge may, in his discretion, permit a creditor to prove his claim—*even after* the expiration of the period originally fixed. (Section 2, Rule 87).

Furthermore, all the parties interested in this litigation covenanted on October 16, 1951—after the expiration of the period—to submit Atty. Quintillan's claim to the court's decision so that *reasonable attorneys* fees may be fixed, chargeable as expense of administration. Hence the appellants may not be heard to complain that the court rendered the award and practically extended the time for presentation of the attorney's claim.

[1] See Moran, Comments Rules of Court, 1952 Ed. Vol. 2, p. 429.

In connection with appellants' second contention,

"The records of the case and the evidence adduced"—says the trial judge—"show that said Atty. Quintillan rendered professional services as counsel for the petitioner in the petition for probate of the will of the late Placida Mina, in the present case, Civil Case No. 3689 said Atty. Quintillan rendered his professional services as counsel for said petitioners in their opposition to the petition of one Dr. Eufemio Domingo (Civil Case No. 3689) for the probate of another supposed will of said Placida Mina and also in the petition of Joaquin Escobar (Civil Case No. 3689) for the probate of another supposed will of said late Placida Mina. The supposed will in said Civil Case No. 3685 was denied probate on appeal by the Court of Appeals and the petition of Joaquin Escobar in Civil Case No. 3686 was dismissed at the insurance of the petitioner.

"The will in the present case, No. 3689, was allowed to probate in this Court, and on appeal, the Court of Appeals affirmed the decision appealed from.

"In sum, the claimant Atty. Jesus C. Quintillan, as counsel in the three above mentioned civil cases, obtained favorable decisions. Aside from his services in those three cases, the claimant also rendered services for the benefit of the estate of the deceased Placida Mina. He defended the validity of the provisions of the probated will in Civil Case No. 303 of this Court, for although the claimant lost his case in this Court, he appealed and succeeded in securing the dismissal of the petition for declaratory judgment by the Supreme Court."

To determine the compensation for legal services, courts in this jurisdiction take into account, in the absence of contract, several factors, namely, "(1) amount and character of the services rendered; (2) labor, time, and trouble involved; (3) nature and importance of the litigation or business in which the services were rendered; (4) responsibility imposed; (5) amount of money or value of the property affected by the controversy, or involved in the employment; (6) skill and experience called for in the performance of the services; (7) professional character and social standing of the attorney; (8) results secured; (9) whether or not the fee is absolute or contingent, it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not [2]."

These are generally questions of fact, which in this instance should be left mostly to the trial judge, since the heirs' appeal direct to this court is logically confined to

[2] Haussermann *vs.* Rahmeyer, 12 Phil., 350; Delgado *vs.* De la Rama, 43 Phil., 419; Panis *vs.* Yangco, 52 Phil., 499; Guzman *vs.* Visayan Rapid Transit Co., 39 Off. Gaz., 532; Perez *vs.* Scottish Union & National Insurance Co., 76 Phil., 320; Moran's, Vol. III, pp. 687–688, 1952 Ed.

questions of law. At any rate, no material circumstance has been shown to justify a declaration that the amount awarded was excessive, having in mind the principles and practice where counsel is engaged on the basis of *quantum meruit* or contingent fees.

It is to be observed that an absolute majority of the trustees of the will (four) agreed in Exhibit A–1 to give the appellee 30 per cent of the entire estate valued at ₱500,000 and more [3]. Although such contract has not been submitted to the court for approval [4], still it could be a proper element to reckon. At least in one case, an agreement whereby attorneys were promised compensation equal to 2/6 of the hereditary estate if they succeeded in impugning a will, was declared not to be excessive or unreasonable [5].

The allowance of counsel fees in probate proceedings "rests largely in the sound discretion of the court, which should not be interfered with except for manifest abuse, but it may be modified by the reviewing court when the fee allowed is inadequate or excessive [6].

Premises considered, the appealed order should be, and is hereby affirmed, with costs.

Parás, C. J., Pablo, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Order affirmed.

[No. L–6301. October 30, 1954]

The MUNICIPAL GOVERNMENT OF CALOOCAN, PROVINCE OF RIZAL, plaintiff and appellee, *vs.* CHUAN HUAT & CO., INC., defendant and appellant.

1. CONSTITUTIONAL LAW; EXPROPRIATION; "BIG LANDED ESTATES" CONSTRUED.—The parcel of land sought to be expropriated in Guido *vs.* Rural Progress Administration, 47 Off. Gaz., 1848, had an area of 22,655 square meters. The rule laid down in that case was reiterated in Commonwealth *vs.* Borja, G. R. No. L–1496, 29 November 1949, where the parcel of land involved contained an area of 10,565 square meters; City of Manila *vs.* Arellano Law School, 47 Off. Gaz., 4197, where the parcel of land involved comprised an area of 7,270 square meters; and Lee Tay & Lee Chay, Inc. *vs.* Choco, G. R. No. L–3297, 29 December 1950, where the parcel of land comprehended an area of 900 square meters. In these cases this Court held that the parcel of land involved therein could not be expropriated for resale to their occupants, because the expropriation of the same does not come within the purview of the constitutional provision which authorizes "the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." (Sec. 4, Art. XIII, Con-

[3] And the other two who failed to appeal, impliedly agree to the amount awarded.

[4] C. J. Vol. 65 pp. 644, 718, 719.

[5] Quitoriano *vs.* Centeno, 59 Phil., 646.

[6] C. J. Vol. 68 pp. 1222–1223.

stitution.) Even Republic Act No. 1162, approved on 18 June 1954, which authorizes the City of Manila to expropriate lands, applies only to landed estates or *haciendas* which have been and are actually being leased to tenants. This last Act is a further indication of the intent and purpose of Congress not to allow the expropriation of small parcels of land.

2. ID.; ID.; CONDEMNATION PROCEEDINGS, NOT THE PROPER PROCEDURE IF OWNERSHIP OF DEFENDANT IS IN QUESTION.—The fact that the parcel of land is owned by a corporation the stock of which belongs mostly to Chinese citizens does not authorize the use of the power of eminent domain under Republic Act No. 267. If the corporation is disqualified to own land under the rule laid down in the Krivenko case (44 Off. Gaz., 471) because of alienage of the owners of its corporate stock, eminent domain is not the proper proceedings to divest it of its title. Besides, condemnation proceedings is brought upon the postulate that the defendant owns the property to be expropriated. It is an inconsistency to recognize and at the same time deny the ownership or title of the person to the property sought to be expropriated. As the municipal corporation that seeks to expropriate the parcel of land in question has no authority to condemn it, the hearing held by the commissioners to find out and determine its reasonable market value and the order of the Court fixing a value per square meter are a nullity and should be set aside.

APPEAL from a judgment of the Court of First Instance of Rizal. Gatmaitan, J.

The facts are stated in the opinion of the Court.

Provincial Fiscal Irineo V. Bernardo for the plaintiff and appellee.

Alejo Mabanag for the defendant and appellant.

Ozaeta, Roxas, Lichauco & Picazo as amici curiae.

PADILLA, *J.:*

The Municipality of Caloocan, a public corporation, commenced proceedings in the Court of First Instance of Rizal to expropriate pursuant to the provisions of Republic Act No. 267 a parcel of land containing an area of 12,068 square meters, situate in barrio Calaanan, municipality of Caloocan, province of Rizal, owned by Choan Huat & Co., Inc., the corporate stock of which belongs mostly to Chinese citizens. The parcel of land is known as lot No. 2468, Cadastral Case No. 28, G.L.R.O. Cadastral Record No. 2577, for which transfer certificate of title No. 68756/T–223 was issued in the name of the corporation.

The defendant moved to dismiss the complaint on the ground that Republic Act No. 267 does not apply to small parcels of land as the one sought to be expropriated invoking the rule laid down in the case of Guido *vs.* Rural Progress Administration, 47 Off. Gaz., 1848; that the persons for whose benefit this proceedings is instituted are intruders who unlawfully and forcibly entered upon the parcel of land and through stealth and strategy ousted the owner's care taker therefrom; that an action for forcible

entry was filed in the justice of the peace court of Caloocan against the intruders; that after hearing judgment was rendered against them which was being executed; that the delay in the execution of the judgment was due to dilatory tactics resorted to by the defendants; and that this expropriation proceedings was commenced for the purpose of frustrating the execution of the judgment in said case.

The Court entered an order dismissing the complaint with costs, on the strength of the rule laid down in the case of Guido *vs.* Rural Progress Administration, *supra.* A motion to set aside the order of dismissal was filed on the ground that the defendant corporation being owned by aliens is disqualified to acquire and hold title to lands under the rule laid down in the case of Krivenko *vs.* Register of Deeds, 44 Off. Gaz., 471. The Court set aside the order of dismissal and ordered the parties to submit the names of commissioners to be appointed to appraise the value of the land in accordance with the Rules of Court. After hearing, the commissioners submitted their report against which no opposition was filed. The Court disregarded the commissioners' report that found from ₱10 to ₱30 to be the reasonable market value of the different parts of the parcel of land and fixed at ₱5 per square meter as the market value of the parcel of land sought to be expropriated and held it sold in eminent domain to the plaintiff. No costs were taxed. From this judgment the defendant corporation has appealed.

Although the appellant discussed in its brief under the second assignment of error the unreasonableness of the market value fixed by the Court of the parcel of land sought to be expropriated, yet it did not waive its objection to the expropriation thereof under the rule laid down in the case of Guido *vs.* Rural Progress Administration, *supra.* In that case this Court held:

> There are indeed powerful considerations, aside from the intrinsic meaning of section 4 of Article XIII of the Constitution, for interpreting Act No. 539 in a restrictive sense. Carried to extremes, this Act would be subversive of the Philippine political and social structure. It would be in derogation of individual rights and the time-honored constitutional guarantee that no private property shall be taken for private use without due process of law. The protection against deprivation of property without due process of law and against the taking of private property for public use without just compensation occupies the forefront positions (paragraphs 1 and 2) in the Bill of Rights (Article III). The taking of private property for private use relieves the owner of his property without due process of law; and the prohibition that "private property should not be taken for public use without just compensation" (section I [par. 2], Article III, of the Constitution) forbids by necessary implication the appropriation of private property for private uses (29 C. J. S., 819). It has been truly said that the assertion of the right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is

claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government. (29 C. J. S., 820.)

* * * In paving the way for the breaking up of existing large estates, trusts in perpetuity, feudalism, and their concomitant evils, the Constitution did not propose to destroy or undermine property rights, or to advocate equal distribution of wealth, or to authorize the taking of what is in excess of one's personal needs and the giving of it to another. Evincing much concern for the protection of property, the Constitution distinctly recognized the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation of economic effort and the formulation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

The promotion of social justice ordained by the Constitution does not supply paramount basis for untrammeled expropriation of private land by the Rural Progress Administration or any other government instrumentality. Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production. * * *.

In reality, section 4 of Article XIII of the Constitution is in harmony with the Bill of Rights. Without that provision the right of eminent domain, inherent in the government, may be exercised to acquire large tracts of land as a means reasonably calculated to solve serious economic and social problems. * * *.

In a broad sense, expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city, bears direct relation to the public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation, clothes the expropriation with public interest and public use. The expropriation in such case tends to abolished economic slavery, feudalistic practices, endless conflicts between landlords and tenants, and other evils inimical to community prosperity and contentment and public peace and order. Although courts are not in agreement as to the tests to be applied in determining whether the use is public or not, some go so far in the direction of a liberal construction as to hold that public use is synonymous with public benefit, public utility, or public advantage, and to authorize the exercise of the power of eminent domain to promote such public benefit, etc., especially where the interests involved are of considerable magnitude. * * *

The condemnation of a small property in behalf of 10, 20 or 50 persons and their families does not inure to the benefit of the public to a degree sufficient to give the use public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public HEALTH, public peace and order, or other public advantage. What is proposed TO BE done is to take plaintiff's property, which for all we know she acquired by sweat and sacrifice for her and her family's security, and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.

No fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances. It suffices to say for the

purpose of this decision that the case under consideration is far wanting in those elements which make for public convenience or public use. It is patterned upon an ideology far removed from that consecrated in our system of government and embraced by the majority of the citizens of this country. If upheld, this case would open the gates to more oppressive expropriations. If this expropriation be constitutional, we see no reason why a 10–, 15–, or 25–hectare farm land might not be expropriated and subdivided, and sold to those who want to own a portion of it. To make the analogy closer, we find no reason why the Rural Progress Administration could not take by condemnation an urban lot containing an area of 1,000 or 2,000 square meters for subdivision into tiny lots for resale to its occupants or those who want to build thereon. (Pp. 1850–1854.)

The parcel of land sought to be expropriated in the case just mentioned had an area of 22,655 square meters. The rule laid down in that case was reiterated in Commonwealth *vs.* Borja, G. R. No. L–1496, 29 November 1949, where the parcel of land involved contained an area of 10,565 square meters; City of Manila *vs.* Arellano Law School, 47 Off. Gaz., 4197, where the parcel of land involved comprised an area of 7,270 square meters; and Lee Tay & Lee Chay, Inc. *vs.* Choco, G. R. No. L–3297, 29 December 1950, where the parcel of land comprehended an area of 900 square meters. In these cases this Court held that the parcels of land involved therein could not be expropriated for resale to the occupants, because the same do not come within the purview of the constitutional provision which authorizes "the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."[1] Even Republic Act No. 1162, approved on 18 June 1954, which authorizes the City of Manila to expropriate lands, applies only to landed estates or *haciendas* which have been and are actually being leased to tenants. This last Act is a further indication of the intent and purpose of Congress not to allow the expropriation of small parcels of land.

The fact that the parcel of land is owned by a corporation the stock of which belongs mostly to Chinese citizens would not authorize the exercise of the power of eminent domain under Republic Act No. 267. If the corporation is disqualified to own land under the rule laid down in the Krivenko case because of alienage of the owners of its corporate stock, the exercise of the power of eminent domain is not the proper proceedings to divest it of its title. Besides, condemnation proceedings is brought upon the postulate that the defendant owns the property to be expropriated. It is an inconsistency to recognize and at the same time deny the ownership or title of the person to the property sought to be expropriated. As the municipal corporation that seeks to expropriate the parcel of land in question has no authority to condemn it, the

[1] Section 4, Article XIII, Constitution of the Philippines.

hearing held by the commissioners to find out and determine its reasonable market value and the order of the Court fixing such value at ₱5 per square meter are a nullity and should be set aside.

The judgment appealed from declaring the parcel of land sold in expropriation to the plaintiff municipal corporation and the setting aside of the order of dismissal are annulled and the order of the Court dismissing the complaint is revived, without pronouncement as to costs.

Parás, C. J., Bengzon, Montemayor, Jugo, Bautista Angelo, Concepción, and *J. B. L. Reyes, JJ.,* concur.

A. Reyes, J., reserves his vote.

PABLO, *M.,* disidente:

El terreno que es objeto de la presente causa de expropiación fué obtenido en compra por Choan Huat Co., Inc. en 6 de enero de 1944 en la cantidad de ₱55,000, papel moneda japonesa. Al tiempo de la presentación de la demanda el terreno estaba amillarado en ₱4,290 y, despues de emplazada la demanda en 11 de enero de 1950, su valor amillarado se elevó a ₱60,340. Esto demuestra que su valor se había inflado para algún fin: tal vez para obtener mejor precio en caso de concederse la expropiación.

Se contiende que no cabe la expropación del terreno siguiendo la doctrina adoptada en la causa de Guido. No tiene aplicación en el caso presente, porque la extensión superficial no es el único factor determinante; otras circunstancias deben tomarse en cuenta.[1] Guido, la actual propietaria del terreno, lo había heredado de sus padres y probablemente éstos lo habrán heredado de sus tatarabuelos; es filipina y tiene derecho a poseer y adquirir bienes raíces en Filipinas: no existe ley que se lo impida. En cambio, el terreno en cuestión fué adquirido en compra por Choan Huat Co., Inc. al tiempo en que ya estaba en vigor la Constitución de la República Filipina bajo el régimen japonés, que prohibía la venta de terreno a extranjeros. Del capital de Choan Huat Co., Inc. ₱900,000 fueron suscritos y pagados por ciudadanos chinos, y solamente la cantidad de ₱100 fué pagada por un filipino. Esta corporación no puede comprar bienes inmuebles en Filipinas, porque el 60 porciento de su capital no es de la propiedad de ciudadanos filipinos. La parte de la Constitución del Commonwealth que protege la propiedad inmueble continuaba en vigor durante el régimen japonés, porque está considerado como ley local (véase disidencia

[1] The Rural Progress Administration *contra* Clemente G. Reyes, G. R. No. L-4703, Octubre 8, 1953.

en Arambulo contra Cua y otro, G. R. No. L–7196.) Bajo dicha ley tampoco podía la corporación adquirir el terreno.

El artículo 4.°, Título XIII, de la Constitución del Commonwealth y de la verdadera República de Filipinas, dispone: "El Congreso podrá autorizar, mediante justa indemnización, la expropiación de terrenos para ser subdivididos en pequeños lotes y traspasados a precio de costo a individuos particuares." y, de acuerdo con esta disposición, el Congreso aprobó la Ley No. 267 que autoriza a los municipios a expropiar, mediante justa compensación, terrenos para ser revendidos a los residentes de dichos municipios. El artículo 2 de dicha ley dice así:

"The home sites so acquired shall be subdivided into lots not exceeding five hundred square meters each and sold on a ten-year installment plan, at the same rate of interest paid by the city or municipality for the loan used in acquiring the said home sites, preference being given to Filipino *bona fide* occupants and to Filipino veterans, their widows, and their children.

"No such lot shall be sold to any person who already owns a residential lot, and any sale made to such person shall be void.

"Before full payment of the home site lot has been made, title therein shall remain vested in the city or municipality concerned: *Provided,* That no such lot, before full payment thereof, shall be transferred, encumbered, or otherwise disposed of by the purchaser thereof without the consent of the Mayor." (Sec. 2, Rep. Act. No. 267)

Es evidente el propósito de la Asemblea Constituyente y del Congreso al disponer la expropiación de terrenos para ser revendidos en pequeños lotes de 500 metros cuadrados a sus ocupantes: quieren dar oportunidad a los desheredados de la fortuna para adquirir un solar en donde construir su hogar; no quieren ver la repetición del triste caso de Hongkong en que, per no tener casa, los naturales tienen que vivir en "sampanes". Si a los filipinos pobres no se les proporciona la oportunidad de poseer un pedazo de terreno en que levantar su casucha, tendrán que remontarse y adoptar la vida nómada de los negritos y tinguianes, o identificarse con los Huks, o tendrán que vivir en balsas sobre los esteros o en "barongbarongs" en los parques o terrenos del gobierno.

El régimen japonés, de triste recordación, nos proporciona un ejemplo. Bajo aquel régimen, algunos, por imperiosas necesidades de momento, tuvieron que vender sus terrenos, algunos su hogar, otros sus animales de labor, y muchos sus muebles, alhajas, etc.; se desprendieron de todo cuanto tenían para librarse del hambre. Los extranjeros, que no podían ser acusados de traición bajo el códibo penal entonces vigente, se aliaron con los invasores y, por su posición ventajosa porque privaban en las alturas, acapararon todo cuanto podían para dejar en la miseria a los filipinos. Arroz, alimentos en conserva, ropa, medi-

cinas, todo estaba concentrado en manos extrañas. Los naturales, que debían tener mejor derecho en su propia vierra que los extranjeros, sufrían miseria y hambre y morían como chinches. Bajo aquella situción difícil el terreno en cuestión había sido adquirido por la corporación demandada. Si no se permite que expropie el terreno el gobierno municipal de Calcocan, como no se permitió a los antiguos dueños recobrar lo que vendieron en contravención de la Constitución,[1] entonces la deducción forzosa es que se protege a una corporación extranjera; se le permite por este Tribunal retener un terreno anticonstitucionalmente adquirido; se frustra el propósito humanitario de la Asemblea Constituyente y del Congreso de proporcionar un pedacito de solar a los que no lo tienen para que pueden vivir como hombres civilizados y no como los "coolies" de Hongkong, completamente abandonados a su suerte.

No debemos permiter que se repitan amargas experiencias en el pasado. Los filipinos deben tener dominio del suelo si quieren afrontar le situación con alguna ventaja: esa es la piedra angular sobre que descansa la prohibición de la Constitución.

En Cuba y Puerto Rico están arraigados los grandes intereses extranjeros que en un momento dado pueden estrangular económicante a la nación y a sus habitantes, como los grandes intereses extranjeros estrangularon sin piedad a los filipinos bajo la égida japonesa.

Después del embargo de las grandes explotaciones mineras y reventa en pequeños lotes de los grandes latifundios, los mejicanos se sienten mejor, ya están libres del yugo económico extranjero y las convulsiones sociales han desparecido.

Los acontecimientos en Iran y Egipto tienden a restablecer a los naturales en el dominio al suelo y de los recursos naturales. Cito estos casos por su resultado y no por el procedimiento empleado. El derecho natural triunfa, y el derecho de la fuerza cede paso al nuevo ideal social.

Van a morir de hambre acaso los socios de la corporación denmandada si se concede la expropiación del terreno? No. En cambio, un solarcito de 500 metros es cuestión de vida para los ocupantes; con esa pequeña huerta, pagadera en diez años, cada familia trabajará para construir su casita, procurará ahorrar para pagar su obligación al gobierno, y se la acostumbrará a una vida de orden, de paz y de trabajo honrado. Con el sudor de su frente cada familia formará su hogar en un ambiente de felicidad y, al sentirse dueña de algo que no querrá perder

[1] Rellosa *contra* Gaw Chee Hun, G. R. No. L-1411, September 29, 1953; Caoile *contra* Yu Chiao Peng, G. R. No. L-4068, Septiembre 29, 1953; Bautista *contra* Uy Isabelo, G. R. No. L-3007, Septiembre 29, 1953.

jamas, desde ese momento aborreccerá la doctrina absurda de la repartición que pregonan los comunistas. En adelante cada hogar será una fortaleza contra las incursiones del descontento mal contenido del comunismo y cada habitante de ese hogar será un defensor de la democracia.

Se dice que proporcionar a los pobres un pedacito de solar significa paternalismo. Bajo las circunstancias actuales, el paternalismo estatal es indispensable. Un solo individuo, aislado, no puede luchar contra intereses bien establecidos. Si, bajo el actual desequilibrio económico, se adoptara la teoría de la libre contratación entre patronos y obreros, éstos, por ser pobres y estar sin protección alguna, quedarían vencidos y aniquilados. El amo puede imponer un jornal de 50c al día. Obligada por el desempleo, la clase laberal tendría que eceptar un jornal miserable en perjuicio de su salud. De ahí que el estadista previsor adopta un sistema de jornal mínimo, prescribe el número de las horas de trabajo, protege al niño y a la mujer, da asilo al anciano y desvalido, lagaliza la negociación colectiva por las asociaciones obreras para que pueden reclamar mejores condiciones de trabajo, castiga la usura y ordena la venta de pequeños lotes a los pobres, pagadera a plazos fáciles. El efecto bienhechor de este paternalismo se manifiesta en el establecimiento del EDCOR: los Huks, elementos anteriormente hostiles al Estado, viven hoy en paz en su nuevo hogar, proporcionado por el gobierno; depusieron las armas, repudiaron luego sus doctrinás subversivas y hoy, regenerados en un nuevo ambiente, trabajan para sí, para sus hijos y para su país.

Pero aboliendo el paternalismo propugnado por el nuevo orden social, los menesterosos continuarían rodando por lapendiente de la miseria sin esperanza de redención. Mientras pocos se enriquecen, a la mayoría se la priva de los medios para rehabilitarse. El resultado no es díficil de prever: huelga, descontento, miseria, hambre, caos, sangre. La humanidad no podrá continuar progresando con la aniquilación de las masa obreras. El trabajo debe ser lazo de armonía—en vez de arma de lucha—entre los dos factores de producción, patrono y obrero. El paternalismo del Estado en el caso presente es indispensable para producir una ciudadañía libre de horrores de la miseria, una ciuadañia que puede sobrellevar la responsabilidad de educar y mantener a sus dependientes, una ciudadañia que sepa cumplir las obligaciones y hacer respetar sus derechos. Una masa miserable, hambrienta, no puede formar una nación robusta: a la larga esa masa amorfa y al parecer dúctil, al saturarse de odio contra los pudientes, tndrá que estallar. Los grandes cataclismos sociales fueron el resultado de la opresión del proletariado. No debemos olvidar la lección que nos

da la historia. Debemos emplear todos los recursos legales antes de que el populado se desborde.

El valor del terreno de ₱55,000, en papel moneda japonesa, reducido de acuerdo con la escala Ballantine, es solamente ₱13,750. Indemnizado a la corporación demandada, de acuerdo con la decisión del tribunal inferior, en la cantidad de ₱60,340, a razón de ₱5 por metro cuadrado, ella obtiene una ganancia de ₱46,590 o ₱346.10 por ciento. ¿Qué clase de negocio puede dar ahora una ganancia tan fenomenal? —

La corporación apelante reclama en su alegato el precio de ₱10 a ₱30 por metro cuadrado. Si en Sta. Mesa, cerca de la carretera nacional para San Juan, Gregorio Araneta Co., Inc. estaba dispuesta a vender en 1947 a la Rural Progress Administration lotes a razón de ₱7 por metro cuadrado, ¿como es que en Caloocan se puede exigir un precio de ₱10 a ₱30 el metro cuadrado? Si se adopta el precio de ₱30, entonces la corporación se llevaría una ganancia de ₱348,290 con un capital de ₱13,750 o ₱2,533 por ciento.

Es absurda e inhuman la teoría de que una corporación extranjera puede permanecer en el terreno comprado en contravención de la Constitución; que el dominio eminente del Estado es un mito contra ella y que las viente familias que viven en el mismo no tienen derecho a la protección que les brinda la Constitución y la Ley No. 267. Los miembros de esas veinte familias han nacido en Filipinas porque Dios así lo dispuso; tienen derecho inalienable a la vida.

Una corporación no tiene alma; su existencia depende de la ley y de la Constitución; ni tiene entrañas: sólo tiene cajas de seguridad y libros de contabilidad. No le mueve el sentido de justicia en que se fundan las doctrinas del nuevo mundo social. Las veinte familias, a cuyo favor desea el municipio de Caloocan expropiar el terreno, tienen derecho a la vida. Para poder vivir desean obtener el terreno por medio del dominio eminente del Estado. Para vivir es necesario alimentarse. "Se entiende por alimentos todo lo que es indispensable para el sustento, habitación, vestido y asistencia médica, según la posición social de la familia." (Art. 142 del Cód. Civ. antiguo y 290, Cód. Civ. nuevo.)

El Papa Pío XII, dirigiendo la palabra a los Cardenales el 2 de junio de 1948, les decía: "En el centro de las cuestiones del día están, como bien se sabe, las reformas sociales, justas y necesarias, y en especial la urgente necesidad de dar a las clases menos pudientes casa, pan y trabajo."

La "Universal Declaration of Human Rights" propugna por que "that human rights should be protected by the

rule of law"; "to promote social progress and better standards of life in larger freedom;"

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8)

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social service, * * *." (Article 25, Universal Declaration of Human Rights.

El solarcito que reclama cada una de las veiente familias es un elemento necesario para su vida. La corporación lo reclama para medrar, para fines de especulación y no para continuar viviendo. No tiene derecho a retenerlo, ante la Constitución y la ley, y menos aún, ante la conciencia universal.

Voto por la confirmación de la decisión apelada.

Judgment annulled.

[No. L-7189. October 30, 1954]

RAYMUNDO CABANGCALA, ET AL., plaintiffs and appellants, *vs.* SEVERO DOMINGO, defendant and appellee

LAND REGISTRATION COURT, JURISDDICTION OF; FOR WANT OF JURISDICTION OVER PARTIES AND SUBJECT MATTER, ORDER RENDERED COULD BE ANNULLED AT ANY TIME.—The Court of First Instance when acting as a land registration court, has no authority to adjudicate issues that should be ventilated in an ordinary civil action—such as the question of whether the contract of sale in dispute was really entered into or whether the same came under the Statute of Frauds.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Baltazar, J.

The facts are stated in the opinion of the court.

Castillo & Castillo for plaintiffs and appellants.
Antonio Bengzon, Jr. for defendant and appellant.

REYES, A., *J.:*

Alejandra Darang, registered owner of lot No. 842 of the Cadastral Survey of Rosales, Pangasinan, as evidenced by Original Certificate of Title No. 31699 in the land records of said province, died intestate in 1935, survived by her husband, Pedro Cabangcala, and five minor children. Some two years after her death, Severo Domingo filed a petition in the cadastral case (G.L.R.O. Rec. No. 706), alleging that the aforementioned lot had been sold to him by the deceased during her lifetime for ₱500 but that her sudden death had prevented her from making good her undertaking to execute the corresponding deed for purposes of registra-

tion, and praying that, after notice by publication and after hearing, the Register of Deeds of Pangasinan be ordered to cancel Original Certificate of Title No. 31699 and issue a transfer certificate to petioner and his wife Sofia Arreola. Acting on the petition, the court had it set for hearing on a given date and had notice of the hearing given by publication. But as no one appeared to contest the petition, the court received petitioner's evidence and granted the order prayed for, and the order was in due time implemented by the register of deeds.

About ten years thereafter, or on April 8, 1949, the children of the deceased Alejandra Darang filed an action in the Court of First Instance of Pangasinan, asking for the annulment of the order above mentioned and for reinstatement of the original certificate of title in the name of the deceased on the ground that the court that rendered the said order was without jurisdiction, this on the theory that a Court of First Instance when acting as a land registration court has no authority to adjudicate issues that should be ventilated in an ordinary civil action. Plaintiffs also prayed that they be declared owners of the land in question and that defendant be condemned to pay them damages for the occupation of the land since November 2, 1939. Maintaining the validity of the sale made to him by the deceased and the proceedings had for the transfer of title, defendant in addition pleaded prescription, alleging "that the right of action of the plaintiffs to question the sale had already expired."

Upon hearing the cause, the court rendered judgment upholding the sale and the proceeding had for the transfer of title and dismissing the complaint with costs. From this judgment plaintiffs appealed to the Court of Appeals, but that court has certified the case here on the grounds that the questions presented are legal and raise an issue of jurisdiction.

As we see it, the question of jurisdiction is decisive of the case.

Section 57 of the Land Registration Act provides that an owner desiring to convey in fee his registered land shall execute a deed of conveyance, which, for purposes of registration, the grantor or grantee may present to the register of deeds in the province where the land lies together with the grantor's duplicate certificate of title; while section 127 says that such deed of conveyance shall be signed by the person executing the same in the presence of witnesses and acknowledged before a notary public or any of the officers mentioned in that section. The Act thus requires, for purposes of registration, a deed of conveyance in proper form. As the grantor in the present case died before she could fulfill her promise to execute the proper deed, it is obvious that the remedy of the grantee,

if he wanted the sale registered and the title transferred to him, was through an action to compel the heirs to fulfill the promise. But instead of following this obvious procedure, the grantee sought to have the transfer of title made through the procedure indicated in section 112 of the Land Registration Act. As has been repeatedly declared by this court (Castillo et al., *vs.* Ramos, 45 Off. Gaz., 183; Miraflor *vs.* Leaño et al., G.R. No. L–6097) that procedure is not intended for the adjudication of questions properly pertaining to an ordinary civil action—such as the question of whether the alleged contract of sale was really entered into or whether the same came under the Statute of Frauds. Moreover, the section requires "notice to all parties in interest," and in the present case the children of the deceased (plaintiffs herein) were not notified or even named in the petition, to say nothing of the fact that plaintiffs were then minors with no guardian *ad litem* having been appointed to represent them. The court thus did not acquire jurisdiction over the persons of those who should have been made parties to the case (the heirs of the deceased). For this and for like want of jurisdiction over the subject-matter of the action, the order rendered by the court was void *ab initio* and could be annulled at any time.

Wherefore, the judgment appealed from is reversed and the proceedings and orders complained of annulled, and the Register of Deeds of Pangasinan ordered to cancel the transfer certificate of title issued to the appellee and reinstate the original certificate of title in the name of the deceased. With costs against the appellee.

Parás, C. J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Judgment reversed.

[Nos. L–3087 and L–3088. 31 July 1954]

In re: Testate Estate of the deceased JOSÉ B. SUNTAY, SILVINO SUNTAY, petitioner and appellant

In re: Intestate Estate of the deceased JOSÉ B. SUNTAY, FEDERICO C. SUNTAY, administrator and appellee

1. WILLS; PROBATE OF WILLS; ASSIGNMENT OF INTEREST IN THE ESTATE, NOT A BAR TO PROBATE OF A LOST OR FOREIGN WILL.—In an intestate proceeding that had already been instituted in the Philippines, the widow and child of the testator are not estopped from asking for the probate of a lost will or of a foreign will just because of the transfer or assignment of their share, right, title and interest in the estate of the deceased. The validity and legality of such assignments can not be threshed out in the probate proceeding which is concerned only with the probate of the will.
2. ID.; ID.; PROOF OF LOST WILL; PROVISIONS OF WILL MUST BE PROVED BY AT LEAST TWO CREDIBLE WITNESSES; WHO ARE

CREDIBLE WITNESSES.—Granting that a will was duly executed and that it was in existence at the time of, and not revoked before, the death of the testator, still the provisions of the lost will must be clearly and distinctly proved by at least two credible witnesses. "Credible witnesses" mean competent witnesses and not those who testify to facts from or upon hearsay.

3. ID.; PROBATE OF WILL IS A PROCEEDING IN REM; NOTICE TO ALL PARTIES ESSENTIAL FOR ITS VALIDITY.—In the absence of proof that the municipal district court of Amoy is a probate court and on the Chinese law of procedure in probate matters, it may be presumed that the proceedings in the matter of probating or allowing a will in the Chinese courts are the same as those provided for in our laws on the subject. It is a proceeding *in rem* and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made.

4. ID.; ID.; PROCEEDINGS LIKENED TO A DEPOSITION OR TO A PERPETUATION OF TESTIMONY.—The proceedings had in the municipal district court of Amoy, China, may be likened to a deposition or to a perpetuation of testimony, and even if it were so, notice to all interested parties was necessary for the validity of such proceedings.

5. ID.; WILLS PROVED IN A FOREIGN COUNTRY; PROBATE SHOULD BE IN ACCORDANCE WITH ACCEPTED BASIC AND FUNDAMENTAL CONCEPTS AND PRINCIPLES.—Where it appears that the proceedings in the court of a foreign country were held for the purpose of taking the testimony of two attesting witnesses to the will and the order of the probate court did not purport to allow the will, the proceedings cannot be deemed to be for probate of a will, as it was not done in accordance with the accepted, basic and fundamental concepts and principles followed in the probate and allowance of wills. Consequently, the will referred to therein cannot be allowed, filed and recorded by a competent court of this country.

6. WILLS, PROBATE OF; LACK OF OBJECTION TO PROBATE OF LOST WILL DOES NOT RELIEVE PROPONENT THEREOF FROM ESTABLISHING ITS DUE EXECUTION.—The lack of objection to the probate of a lost will does not relieve the proponent thereof or the party interested in its probate from establishing its due execution and proving clearly and distinctly the provisions thereof by at least two credible witnesses, as provided for in section 6, Rule 77 of the Rules of Court.

7. ID.; APPEALS; JURISDICTION OF SUPREME COURT TO REVIEW FINDINGS OF FACT AND LEGAL PRONOUNCEMENTS IN CASES INVOLVING MORE THAN ₱50,000.—In an appeal from a judgment of the probate court, the Supreme Court, in the exercise of its appellate jurisdiction, has the power to review and correct erroneous findings of fact and legal pronouncements of the probate court, where the amount involved is more than ₱50,000.

APPEAL from a decree of the Court of Instance of Bulacan. Pecson, *J.*

The facts are stated in the opinion of the court.

Claro M. Recto for petitioner and appellant.
Sison & Aruego for administrator and appellee.

PADILLA, *J.:*

This is an appeal from a decree of the Court of First Instance of Bulacan disallowing the alleged will and testa-

ment executed in Manila on November 1929, and the alleged last will and testament executed in Kulangsu, Amoy, China, on 4 January 1931, by Jose B. Suntay. The value of the estate left by the deceased is more than ₱50,000.

On 14 May 1934 José B. Suntay, a Filipino citizen and resident of the Philippines, died in the city of Amoy, Fookien province, Republic of China, leaving real and personal properties in the Philippines and a house in Amoy, Fookien province, China, and children by the first marriage had with the late Manuela T. Cruz namely, Apolonio, Concepción, Angel, Manuel, Federico, Ana, Aurora, Emiliano and José, Jr. and a child named Silvino by the second marriage had with María Natividad Lim Billian who survived him. Intestate proceedings were instituted in the Court of First Instance of Bulacan (special proceedings No. 4892) and after hearing letters of administration were issued to Apolonio Suntay. After the latter's death Federico C. Suntay was appointed administrator of the estate. On 15 October 1934 the surviving widow filed a petition in the Court of First Instance of Bulacan for the probate of a last will and testament claimed to have been executed and signed in the Philippines on November 1929 by the late José B. Suntay. This petition was denied because of the loss of said will after the filing of the petition and before the hearing thereof and of the insufficiency of the evidence to establish the loss of the said will. An appeal was taken from said order denying the probate of the will and this Court held the evidence before the probate court sufficient to prove the loss of the will and remanded the case to the Court of First Instance of Bulacan for further proceedings (63 Phil., 793). In spite of the fact that a commission from the probate court was issued on 24 April 1937 for the taking of the deposition of Go Toh, an attesting witness to the will, on 7 February 1938 the probate court denied a motion for continuance of the hearing sent by cablegram from China by the surviving widow and dismissed the petition. In the meantime the Pacific War supervened. After liberation, claiming that he had found among the files, records and documents of his late father a will and testament in Chinese characters executed and signed by the deceased on 4 January 1931 and that the same was filed, recorded and probated in the Amoy district court, Province of Fookien, China, Silvino Suntay filed a petition in the intestate proceedings praying for the probate of the will executed in the Philippines on November 1929 (Exhibit B) or of the will executed in Amoy, Fookien, China, on 4 January 1931 (Exhibit N).

There is no merit in the contention that the petitioner Silvino Suntay and his mother María Natividad Lim Billian are estopped from asking for the probate of the lost will or of the foreign will because of the transfer or assignment

of their share, right, title and interest in the estate of the late José B. Suntay to José G. Gutierrez and the spouses Ricardo Gutierrez and Victoria Goño and the subsequent assignment thereof by the assignees to Francisco Pascual and by the latter to Federico C. Suntay, for the validity and legality of such assignments cannot be threshed out in this proceedings which is concerned only with the probate of the will and testament executed in the Philippines on November 1929 or of the foreign will allegedly executed in Amoy on 4 January 1931 and claimed to have been probated in the municipal district court of Amoy, Fookien province, Republic of China.

As to prescription, the dismissal of the petition for probate of the will on 7 February 1938 was no bar to the filing of this petition on 18 June 1947, or before the expiration of ten years.

As to the lost will, section 6, Rule 77, provides:

> No will shall be proved as a lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded.

The witnesses who testified to the provisions of the lost will are Go Toh, an attesting witness, Anastacio Teodoro and Ana Suntay. Manuel Lopez, who was an attesting witness to the lost will, was dead at the time of the hearing of this alternative petition. In his deposition Go Toh testifies that he was one of the witnesses to the lost will consisting of twenty-three sheets signed by José B. Suntay at the bottom of the will and each and every page thereof in the presence of Alberto Barretto, Manuel Lopez and himself and underneath the testator's signature the attesting witnesses signed and each of them signed the attestation clause and each and every page of the will in the presence of the testator and of the other witnesses (answers to the 31st, 41st, 42nd, 49th, 50th, 55th and 63rd interrogatories, Exhibit D–1), but did not take part in the drafting thereof (answer to the 11th interrogatory, *Id.*); that he knew the contents of the will written in Spanish although he knew very little of that language (answers to the 22nd and 23rd interrogatories and to X–2 cross-interrogatory, *Id.*) and all he knows about the contents of the lost will was revealed to him by José B. Suntay at the time it was executed (answers to the 25th interrogatory and to X–4 and X–8 cross-interrogatories, *Id.*); that José B. Suntay told him that the contents thereof are the same as those of the draft [Exhibit B] (answers to the 33rd interrogatory

and to X–8 cross-interrogatory, *Id.*) which he saw in the office of Alberto Barretto in November 1929 when the will was signed (answers to the 69th, 72nd and 74th interrogatories, *Id.*); that Alberto Barretto handed the draft and said to José B. Suntay: "You had better see if you want any correction" (answers to the 81st, 82nd and 83rd interrogatories, *Id.*); that "after checking José B. Suntay put the 'Exhibit B' in his pocket and had the original signed and executed" (answers to the 91st interrogatory, and to X–18 cross-interrogatory, *Id.*); that Mrs. Suntay had the draft of the will (Exhibit B) translated into Chinese and he read the translation (answer to the 67th interrogatory, *Id.*); that he did not read the will and did not compare it (check it up) with the draft [Exhibit B] (answers to X–6 and X–20 cross-interrogatories, *Id.*).

Ana Suntay testifies that sometime in September 1934 in the house of her brother Apolonio Suntay she learned that her father left a will "because of the arrival of my brother Manuel Suntay, who was bringing along with him certain document and he told us or he was telling us that it was the will of our father José B. Suntay which was taken from Go Toh. . . ." (p. 524, t. s. n., hearing of 24 February 1948); that she saw her brother Apolonio Suntay read the document in her presence and of Manuel and learned of the adjudication made in the will by her father of his estate, to wit: one-third to his children, one-third to Silvino and his mother and the other third to Silvino, Apolonio, Concepción and José, Jr. (pp. 526–8, 530–1, 542, t. s. n., *Id.*); that "after Apolonio read that portion, then he turned over the document to Manuel, and he went away," (p. 528, t. s. n., *Id.*). On cross-examination, she testifies that she read the part of the will on adjudication to know what was the share of each heir (pp. 530, 544, t. s. n., *Id.*) and on redirect she testifies that she saw the signature of her father, Go Toh, Manuel Lopez and Alberto Barretto (p. 546, t. s. n., *Id.*).

Anastacio Teodoro testifies that one day in November 1934 (p. 273, t. s. n., hearing of 19 January 1948), before the last postponement of the hearing granted by the Court, Go Toh arrived at his law office in the De los Reyes Building and left an envelope wrapped in red handkerchief [Exhibit C] (p. 32, t. s. n., hearing of 13 October 1947); that he checked up the signatures on the envelope Exhibit A with those on the will placed in the envelope (p. 33, t. s. n., *Id.*); that the will was exactly the same as the draft Exhibit B (pp. 32, 47, 50, t. s. n., *Id.*).

If the will was snatched after the delivery thereof by Go Toh to Anastacio Teodoro and return by the latter to the former because they could not agree on the amount of fees, the former coming to the latter's office straight from the boat (p. 315, t. s. n., hearing of 19 January 1948) that brought him to the Philippines from Amoy, and that deliv-

ery took place in November 1934 (p. 273, t. s. n., *Id.*), then the testimony of Ana Suntay that she saw and heard her brother Apolonio Suntay read the will sometime in September 1934 (p. 524, t. s. n., hearing of 24 February 1948), must not be true.

Although Ana Suntay would be a good witness because she was testifying against her own interest, still the fact remains that she did not read the whole will but only the adjudication (pp. 526–8, 530–1, 542, t. s. n., *Id.*) and saw only the signatures of her father and of the witnesses Go Toh, Manuel Lopez and Alberto Barretto (p. 546, t. s. n., *Id.*). But her testimony on cross-examination that she read the part of the will on adjudication is inconsistent with her testimony in chief that after Apolonio had read that part of the will he turned over or handed the document to Manuel who went away (p. 528, t. s. n., *Id.*).

If it is true that Go Toh saw the draft Exhibit B in the office of Alberto Barretto in November 1929 when the will was signed, then the part of his testimony that Alberto Barretto handed the draft to José B. Suntay to whom he said: "You had better see if you want any correction" and that "after checking José B. Suntay put the 'Exhibit B' in his pocket and had the original signed and executed" cannot be true, for it was not the time for correcting the draft of the will, because it must have been corrected before and all corrections and additions written in lead pencil must have been inserted and copied in the final draft of the will which was signed on that occasion. The bringing in of the draft (Exhibit B) on that occasion is just to fit it within the framework of the appellant's theory. At any rate, all of Go Toh's testimony by deposition on the provisions of the alleged lost will is hearsay, because he came to know or he learned of them from information given him by José B. Suntay and from reading the translation of the draft (Exhibit B) into Chinese.

Much stress is laid upon the testimony of Federico C. Suntay who testifies that he read the supposed will or the alleged will of his father and that the share of the surviving widow, according to the will, is two-thirds of the estate (p. 229, t. s. n., hearing of 24 October 1947). But this witness testified to oppose the appointment of a co-administrator of the estate, for the reason that he had acquired the interest of the surviving widow not only in the estate of her deceased husband but also in the conjugal property (pp. 148, 205, 228, 229, 231, t. s. n., *Id.*). Whether he read the original will or just the copy thereof (Exhibit B) is not clear. For him the important point was that he had acquired all the share, participation and interest of the surviving widow and of the only child by the second marriage in the estate of his deceased father. Be that as it may, his testimony that under the will the surviving widow would take two-thirds of the estate of the late José

B. Suntay is at variance with Exhibit B and the testimony of Anastacio Teodoro. According to the latter, the third for strict legitime is for the ten children; the third for betterment is for Silvino, Apolonio, Concepción and José, Jr.; and the third for free disposal is for the surviving widow and her child Silvino.

Hence, granting that there was a will duly executed by José B. Suntay placed in the envelope (Exhibit A) and that it was in existence at the time of, and not revoked before, his death, still the testimony of Anastacio Teodoro alone falls short of the legal requirement that the provisions of the lost will must be "clearly and distinctly proved by at least two credible witnesses." Credible witnesses mean competent witnesses and those who testify to facts from or upon hearsay are neither competent nor credible witnesses.

On the other hand, Alberto Barretto testifies that in the early part of 1929 he prepared or drew up two wills for José B. Suntay at the latter's request, the rough draft of the first will was in his own handwriting, given to Manuel Lopez for the final draft or typing and returned to him; that after checking up the final with the rough draft he tore it and returned the final draft to Manuel Lopez; that this draft was in favor of all the children and the widow (pp. 392–4, 449, t. s n., hearing of 21 February 1948); that two months later José B. Suntay and Manuel Lopez called on him and the former asked him to draw up another will favoring more his wife and child Silvino; that he had the rough draft of the second will typed (pp. 395, 449, t. s. n., *Id.*) and gave it to Manuel Lopez (p. 396, t. s. n., *Id.*); that he did not sign as witness the second will of José B. Suntay copied from the typewritten draft [Exhibit B] (p. 420, t. s. n., *Id.*); that the handwritten insertions or additions in lead pencil to Exhibit B are not his (pp. 415–7, 435–6, 457, t. s. n., *Id.*); that the final draft of the first will made up of four or five pages (p. 400, t. s. n., *Id.*) was signed and executed, two or three months after Suntay and Lopez had called on him (pp. 397–8, 403, 449, t. s. n., *Id.*), in his office at the Cebú Portland Cement in the China Banking Building on Dasmariñas street by José B. Suntay, Manuel Lopez and a Chinaman who had all come from Hagonoy (p. 398, t. s. n., *Id.*); that on that occasion they brought an envelope (Exhibit A) where the following words were written: "Testamento de José B. Suntay" (pp. 399, 404, t. s. n., *Id.*); that after the signing of the will it was placed inside the envelope (Exhibit A) together with an inventory of the properties of José B. Suntay and the envelope was sealed by the signatures of the testator and the attesting witnesses (pp. 398, 401, 441, 443, 461, t. s. n., *Id.*); that he again saw the envelope (Exhibit A) in his house one Saturday in the later part of August 1934, brought by Go Toh and it was then in perfect condition (pp. 405–6,

411, 440–2, t. s. n., *Id.*) ; that on the following Monday Go Toh went to his law office bringing along with him the envelope (Exhibit A) in the same condition; that he told Go Toh that he would charge ₱25,000 as fee for probating the will (pp. 406, 440–2, *Id.*) ; that Go Toh did not leave the envelope (Exhibit A) either in his house or in his law office (p. 407, t. s. n., *Id.*) ; that Go Toh said he wanted to keep it and on no occasion did Go Toh leave it to him (pp. 409, 410, t.s.n., *Id.*).

The testimony of Go Toh taken and heard by Assistant Fiscal F. B. Albert in connection with the complaint for *estafa* filed against Manuel Suntay for the alleged snatching of the envelope (Exhibit A), corroborates the testimony of Alberto Barretto to the effect that only one will was signed by José B. Suntay at his office in which he (Alberto Barretto), Manuel Lopez and Go Toh took part as attesting witnesses (p. 15, t. s. n., Exhibit 6). Go Toh testified before the same assistant fiscal that he did not leave the will in the hands of Anastacio Teodoro (p. 26, t. s. n., Exhibit 6). He said, quoting his own words, "Because I can not give him this envelope even though the contract (on fees) was signed. I have to bring that document to court or to anywhere else myself." (p. 27, t. s. n., Exhibit 6.)

As to the will claimed to have been executed on 4 January 1931 in Amoy, China, the law on the point is Rule 78. Section 1 of the rule provides:

> Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.

Section 2 provides:

> When a copy of such will and the allowance thereof, duly authenticated, is filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.

Section 3 provides:

> If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and a certificate of its allowance, signed by the Judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proved and allowed in such court.

The fact that the municipal district court of Amoy, China, is a probate court must be proved. The law of China on procedure in the probate or allowance of wills must also be proved. The legal requirements for the execution of a valid will in China in 1931 should also be established by competent evidence. There is no proof on these points. The unverified answers to the questions propounded by counsel for the appellant to the Consul General of the Re-

public of China set forth in Exhibits R–1 and R–2, objected to by counsel for the appellee, are inadmissible, because apart from the fact that the office of Consul General does not qualify and make the person who holds it an expert on the Chinese law on procedure in probate matters, if the same be admitted, the adverse party would be deprived of his right to confront and cross-examine the witness. Consuls are appointed to attend to trade matters. Moreover, it appears that all the proceedings had in the municipal district court of Amoy were for the purpose of taking the testimony of two attesting witnesses to the will and that the order of the municipal district court of Amoy does not purport to probate the will. In the absence of proof that the municipal district court of Amoy is a probate court and on the Chinese law of procedure in probate matters, it may be presumed that the proceedings in the matter of probating or allowing a will in the Chinese courts are the same as those provided for in our laws on the subject. It is a proceedings *in rem* and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made. The interested parties in the case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties residing in the Philippines (pp. 474, 476, 481, 503–4, t. s. n., hearing of 24 February 1948). The proceedings had in the municipal district court of Amoy, China, may be likened to a deposition or to a perpetuation of testimony, and even if it were so it does not measure or come up to the standard of such proceedings in the Philippines for lack of notice to all interested parties and the proceedings were held at the back of such interested parties.

The order of the municipal district court of Amoy, China, which reads, as follows:

ORDER:

SEE BELOW

The above minutes were satisfactorily confirmed by the interrogated parties, who declare that there are no errors, after said minutes were loudly read and announced actually in the court.

Done and subscribed on the Nineteenth day of the English month of the 35th year of the Republic of China in the Civil Section of the Municipal District Court of Amoy, China.

HUANG KWANG CHENG
Clerk of Court
CHIANG TENG HWA
Judge

(Exhibit N–13, p. 89 Folder of Exhibits.)

does not purport to probate or allow the will which was the subject of the proceedings. In view thereof, the will and the alleged probate thereof cannot be said to have been done in accordance with the accepted basic and

fundamental concepts and principles followed in the probate and allowance of wills. Consequently, the authenticated transcript of proceedings held in the municipal district court of Amoy, China, cannot be deemed and accepted as proceedings leading to the probate or allowance of a will and, therefore, the will referred to therein cannot be allowed, filed and recorded by a competent court of this country.

The decree appealed from is affirmed, without pronouncement as to costs.

Pablo, Bengzon, A. Reyes, Labrador and Concepción, JJ., concur.

PARÁS, *J.*, dissenting:

As a preliminary statement we may well refer to the case of Maria Natividad Lim Billian, petitioner and appellant, *vs.* Apolonio Suntay, Angel Suntay, Manuel Suntay, and Jose Suntay, oppositors and appellees, 63 Phil., 798–797, in which the following decision was rendered by this Court on November 25, 1936, holding that the will executed by Jose B. Suntay who died in the City of Amoy, China, on May 14, 1934, was lost under the circumstances pointed out therein, and ordering the return of the case to the Court of First Instance of Bulacan for further proceedings:

"On May 14, 1934, Jose B. Suntay died in the City of Amoy, China. He married twice, the first time to Manuela T. Cruz with whom he had several children now residing in the Philippines, and the second time to Maria Natividad Lim Billian with whom he had a son.

"On the same date, May 14, 1934, Apolonio Suntay, eldest son of the deceased by his first marriage, filed the latter's intestate in the Court of First Instance of Manila (civil case No. 4892).

"On October 15, 1934, and in the same court, Maria Natividad Lim Billian also inistituted the present proceedings for the probate of a will allegedly left by the deceased.

"According to the petitioner, before the deceased died in China he left with her a sealed envelope (Exhibit A) containing his will and, also another document (Exhibit B of the petitioner) said to be a true copy of the original contained in the envelope. The will in the envelope was executed in the Philippines, with Messrs. Go Toh, Alberto Barreto and Manuel Lopez as attesting witnesses. On August 25, 1934, Go Toh, as attorney-in-fact of the petitioner, arrived in the Philippines with the will in the envelope and its copy Exhibit B. While Go Toh was showing this envelope to Apolonio Suntay and Angel Suntay, children by first marriage of the deceased, they snatched and opened it and, after getting its contents and throwing away the envelope, they fled.

"Upon this allegation, the petitioner asks in this case that the brothers Apolonio, Angel, Manuel and Jose Suntay, children by the first marriage of the deceased, who allegedly have the document contained in the envelope which is the will of the deceased, be ordered to present it in court, that a day be set for the reception of evidence on the will, and that the petitioner be appointed executrix pursuant to the designation made by the deceased in the will.

"In answer to the court's order to present the alleged will, the brothers Apolonio, Angel, Manuel and Jose Suntay, the stated that

they did not have the said will and denied having snatched it from Go Toh.

"In view of the allegations of the petition and the answer of the brothers Apolonio, Angel, Manuel and Jose Suntay, the questions raised herein are; The loss of the alleged will of the deceased, whether Exhibit B accompanying the petition is an authentic copy thereof, and whether it has been executed with all the essential and necessary formalities required by law for its probate.

"At the trial of the case on March 25, 1934, the petitioner put two witnesses upon the stand, Go Toh and Tan Boon Chong, who corroborated the allegation that the brothers Apolonio and Angel appropriated the envelope in the circumstances above-mentioned. The oppositors have not adduced any evidence courter to the testimony of these two witnesses. The court, while making no express finding on this fact, took it for granted in its decision; but it dismissed the petition believing that the evidence is insufficient to establish that the envelope seized from Go Toh contained the will of the deceased, and that the said will was executed with all the essential and necessary formalities required by law for its probate.

"In or opinion, the evidence is sufficient to establish the loss of the document contained in the envelope. Oppositors' answer admits that, according to Barretto, he prepared a will of the deceased to which he later became a witness together with Go Toh and Manuel Lopez, and that this will was placed in an envelope which was signed by the deceased and by the instrumental witnesses. In court there was presented and attached to the case an open and empty envelope signed by Jose B. Suntay, Alberto Barretto, Go Toh and Manuel Lopez. It is thus undeniable that this envelope Exhibit A is the same one that contained the will executed by the deceased—drafted by Barretto and with the latter, Go Toh and Manuel Lopez as attesting witnesses. These tokens sufficiently point to the loss of the will of the deceased, a circumstance justifying the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities.

"The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioner's intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barretto bears importantly in this connection.

"Wherefore, the loss of the will executed by the deceased having been sufficiently established, it is ordered that this case be remanded to the court of origin for further proceedings in obedience to this decision, without any pronouncement as to the costs. So ordered."

On June 18, 1947, Silvino Suntay, the herein petitioner, filed a petition in the Court of First Instance of Bulacan praying "that an order be issued (*a*) either directing the continuation of the proceedings in the case remanded by the Supreme Court by virtue of its decision in G. R. No. 44276 and fixing a date for the reception of evidence of the contents of the will declared lost, or the allowance, filing and recording of the will of the deceased which had been duly probated in China, upon the presentation of the certificates and authentications required by Section 41, Rule 123 (Yu Chengco *vs.* Tiaoqui, supra), or both proceedings concurrently and simultaneously; (*b*) that

letters of administration be issued to herein petitioner as co-administrator of the estate of the deceased together with Federico Suntay; and (*c*) that such other necessary and proper orders be issued which this Honorable Court deems appropriate in the premises." While this petition was opposed by Federico C. Suntay, son of the deceased Jose B. Suntay with his first wife, Manuela T. Cruz, the other children of the first marriage, namely, Ana Suntay, Aurora Suntay, Concepcion Suntay, Lourdes Guevara Vda. de Suntay, Manuel Suntay and Emiliano Suntay, filed the following answer stating that they had no opposition thereto; "Come now the heirs Concepcion Suntay, Ana Suntay, Aurora Suntay, Lourdes Guevara Vda. de Suntay, Manuel Suntay, and Emiliano Suntay, through their undersigned attorney, and, in answer to the alternative petition filed in these proceedings by Silvino Suntay, through counsel, dated June 18, 1947, to this Honorable Court respectfully state that, since said alternative petition seeks only to put into effect the testamentary disposition and wishes of their late father, they have no opposition thereto."

After hearing, the Court of First Instance of Bulacan rendered on April 19, 1948, the following decision:

"This action is for the legalization of the alleged will of Jose B. Suntay, deceased.

"In order to have a comprehensive understanding of this case, it is necessary to state the background on which the alternative petition of the herein petitioner Silvino Suntay has been based.

"The decision of the Supreme Court (Exhibit O), in re will of the deceased Jose B. Suntay, 63 Phil., 793–797, is hereunder produced:

(As quoted above)

"The above quoted decision of the Supreme Court was promulgated on November 25, 1936 (Exhibit O).

"The Clerk of Court of the Court of First Instance of Bulacan notified the parties of the decision on December 15, 1936; and the case was set for hearing on February 12, 1937, but it was transferred to March 29, 1937 (Exhibit C), on motion of the then petitioner Maria Natividad Lim Billian (Exhibit F). Again it was postponed until 'further setting in the order of court dated March 18, 1937, upon motion of the petitioner (Exhibit H).

"In the meantime, the deposition of Go Toh was being sought (Exhibit H).

"The hearing of the case was again set for February 7, 1938, by order of the court dated January 5, 1938, upon motion of Emiliano Suntay and Jose Suntay, Jr. On the same day of the hearing which had been set, the petitioner, then, Maria Natividad Lim Billian, sent a telegram from Amoy, China, addressed to the Court of First Instance of Bulacan moving for the postponement of the hearing on the ground that Atty. Eriberto de Silva who was representing her died (Exhibit K). The court, instead of granting the telegraphic motion for postponement, dismissed the case in the order dated February 7, 1938 (Exhibit L).

"On July 3, 1947, the petitioner Silvino Suntay filed a motion for the consolidation of the intestate Estate of the deceased Jose B. Suntay, Special Proceeding No. 4892 and the Testate Estate of Jose B. Suntay, Special Proceeding No. 4952, which latter case is the subject of the said alternative petition. The motion for

the merger and consolidation of the two cases was granted on July 3, 1947.

"The oppositor, Federico C. Suntay, in the Testate Proceeding filed a motion to dismiss the alternative petition on November 14, 1947, which was denied by the court in its resolution of November 22, 1947. The said oppositor not being satisfied with the ruling of this court denying the motion to dismiss, filed before the Supreme Court a petition for a writ of certiorari with preliminary injunction, which was dismissed for lack of merit on January 27, 1948.

"In obedience to the decision of the Supreme Court (Exhibit O) and upon the alternative petition of Silvino Suntay, and, further, upon the dismissal of the petition for a writ of certiorari with preliminary injunction, the court was constrained to proceed with the hearing of the probate of the lost will, the draft of which is Exhibit B, or the admisision and recording of the will which had been probated in Amoy, China.

"The evidence for the petitioner, Silvino Suntay, shows that Jose B. Suntay married twice: first to Manuela T. Cruz who died on June 15, 1920 and had begotten with her Apolonio, now deceased, Concepcion, Angel, Manuel, Federico, Ana, Aurora, Emiliano and Jose, Jr., all surnamed Suntay, and second, to Maria Natividad Lim Billian with whom he had as the only child Silvino Suntay, the petitioner herein.

"Some time in November 1929, Jose B. Suntay executed his last will and testament in the office of Atty. Alberto Barretto in Manila, which was witnessed by Alberto Barretto, Manuel Lopez and Go Toh. The will was prepared by said Alberto Barretto upon the instance of Jose B. Suntay, and it was written in the Spanish language which was understood and spoken by said testator. After the due execution of the will, that is signing every page and the attestation clause by the testator and the witnesses in the presence of each other, the will was placed inside the envelope (Exhibit A), sealed, and on the said envelope the testator and the three subscribing witnesses also signed, after which it was delivered to Jose B. Suntay.

"A year or so after the execution of the will, Jose B. Suntay together with his second wife Maria Natividad Lim Billian and Silvino Suntay who was then of tender age went to reside in Amoy, Fookien, China, where he died on May 14, 1934. The will was entrusted to the widow, Maria Natividad Lim Billian.

"Upon the death of Jose B. Suntay on May 14, 1934, Apolonio Suntay, the oldest son now deceased, instituted the Intestate Proceedings No. 4892, upon the presumption that no will existed. Maria Natividad Lim Billian who remained in Amoy, China, had with her the will and she engaged the services of the law firm of Barretto and Teodoro for the probate of the will. Upon the request of the said attorneys the will was brought to the Philippines by Go Toh who was one of the attesting witnesses, and it was taken to the law office of Barretto and Teodoro. The law firm of Barretto and Teodoro was composed of Atty. Alberto Barretto and Judge Anastacio Teodoro. The probate of the will was entrusted to the junior partner, Judge Anastacio Teodoro; and, upon the presentation of the sealed envelope to him, he opened it and examined the said will preparatory to the filing of the petition for probate. There was a disagreement as to the fees to be paid by Maria Natividad Lim Billian, and as she (through Go Toh) could not agree to pay, ₱20,000.00 as fees, the will was returned to Go Toh by Judge Anastacio Teodoro after the latter had kept it in his safe, in his office, for three days.

"Subsequently, the will inside the envelope was snatched from Go Toh by Manuel Suntay and Jose Suntay, Jr., which fact has been established in the decision of the Supreme Court at the beginning of this decision. Go Toh could recover the envelope (Exhibit A) and the piece of cloth with which the envelope was wrapped (Exhibit C).

"The Testate Proceeding was filed nevertheless and in lieu of the lost will a draft of the will (Exhibit B) was presented as secondary evidence for probate. It was disallowed by this court through Judge Buenaventura Ocampo, but on appeal the Supreme Court remanded the case to this court for further proceedings (Exhibit O).

"In the meantime, a Chinese will which was executed in Amoy, Fookien, China, on January 4, 1931, by Jose B. Suntay, written in Chinese characters (Exhibit P) was discovered in Amoy, China, among the papers left by Jose B. Suntay, and said will had been allowed to probate in the Amoy District Court, China, which is being also presented by Silvino Suntay for allowance and recording in this court.

"The said petition is opposed by Federico C. Suntay on the main ground that Maria Natividad Lim Billian and Silvino Suntay have no more interest in the properties left by Jose B. Suntay, because they have already sold their respective shares, interests and participations. But such a ground of opposition is not of moment in the instant case, because the proposition involved herein is the legalization of the lost will or the allowance and recording of the will which had been probated in Amoy, China.

"It is now incumbent upon this court to delve into the evidence whether or not Jose B. Suntay, deceased, left a will (the draft of which is Exhibit B) and another will which was executed and another will which was executed and probated in Amoy, China.

"There is no longer any doubt that Jose B. Suntay while he was still residing in the Philippines, had executed a will; such is the conclusion of the Supreme Court in its decision (Exhibit O). That the will was snatched and it has never been produced in court by those who snatched it, and consequently considered lost, is also an established fact.

"The contention of the oppositor, Federico C. Suntay, is that the will that was executed by Jose B. Suntay in the Philippines contained provisions which provided for equal distributiion of the properties among the heirs; hence, the draft (Exhibit B) cannot be considered as secondary evidence, because it does not provide for equal distribution, but it favors Maria Natividad Lim Billian and Silvino Suntay. He relies on the testimony of Atty. Alberto Barretto who declared that the first will which he drafted and reduced into a plain copy was the will that was executed by Jose B. Suntay and placed inside the envelope (Exhibit A).

"Granting that the first will which Atty. Alberto Barretto had drafted became the will of Jose B. Suntay and it was snatched by, and, therefore, it had fallen into the hands of, Manuel Suntay and the brothers of the first marriage, it stands to reason that said Manuel Suntay and brothers would have been primarily interested in the production of said will in court, for obvious reasons, namely, that they would have been favored. But it was suppressed and 'evidence willfully suppressed would be adverses if produced' (Section 69 (*e*), Rule 123 of the Rules of Court). The contention, therefore, that the first will which was drafted by Atty. Barretto was the one placed inside the envelope (Exhibit A) is untenable.

"It might be said in this connection that the draft of the will (Exhibit B) has been admitted by Atty. Alberto Barretto as iden-

tical in substance and form to the second draft which he prepared in typewriting; it differs only, according to him, in style. He denied that the insertions in long hand in the said draft are in his own handwriting; however, Judge Anastacio Teodoro averred that the said insertions are the handwriting of Atty. Alberto Barretto. But when Atty. Alberto Barretto was asked to show any manuscript of his for purposes of comparison, he declined to do so alleging that he did not have any document in his possession showing his handwriting notwithstanding the fact that he was testifying in his own house at 188 Sta. Mesa Boulevard, Manila. He further testified that the first will he drafted contained four or five pages, but the second draft contained twenty-three pages; that he declared in one breath that he did not read the will any more when it was signed by the testator and the attesting witnesses because it would take up much time, and in the same breath he declared that he checked it before it was signed; and that he destroyed the draft of the first will which was in his own handwriting, but he delivered the draft of the second will which he prepared to Jose B. Suntay in the presence of Manuel Lopez, now deceased.

"Whether or not the final plain copy of the draft of the will (Exhibit B) was executed by the testator, Jose B. Suntay, and attested by the subscribing witnesses, Atty. Alberto Barretto, Manuel Lopez and Go Toh, is the pivotal point in this instant case. Judge Anastacio Teodoro testified that he opened the sealed envelope when it was given to him by Go Toh preparatory to the presentation of the petition for the probate of the said will. As the lawyer entrusted with that task, he had to examine the will and have it copied to be reproduced or appended to the petition. He could not do otherwise if he is worth his stalt as a good lawyer. He could not perform the stunt of 'blind flying' in the judicial firmament. Every step must be taken with certainty and precision under any circumstances. He could not have talked about the attorney's fees with Go Toh, unless he has not examined the will beforehand. And, declaring that it was the exact draft of the will that was inside the envelope (Exhibit A), the testimony of Atty. Alberto Barretto to the contrary notwithstanding.

"The testimony of Judge Anastacio Teodoro is corroborated by Go Toh, one of the attesting witnesses, in his deposition (Exhibit D–1).

"Ana Suntay, one of the heirs and who would be affected adversely by the legalization of the will in question, also testified on rebuttal that she saw the original will in the possession of Manuel Suntay immediately after the snatching. She read it and she particularly remembers the manner in which the properties were to be distributed. Exhibit B was shown to her on the witness stand and she declared that the provision regarding the distribution of the properties in said Exhibit B is the same as that contained in the original will. Said testimony of Ana Suntay, therefore, belies the testimony of Atty. Alberto Barretto.

"With respect to the proof of lost or destroyed will, Section 6 of Rule 77 provides as follows:

> 'No will shall be proved as a lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or it is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof

must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded.

"Section 8 of the same Rule provides as follows:

'If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philipipines the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will; and as evidence of the due execution of the will, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.'

"Manuel Lopez as one of the subscribing witnesses is dead. Atty. Alberto Barretto and Go Toh are still living. The former testified during the hearing, while Go Toh's deposition was introduced in evidence which was admitted. In the absence of the testimony of Manuel Lopez, deceased, the testimony of Judge Anastacio Teodoro and Ana Suntay was received.

"It is an established fact that the will, the draft of which is Exhibit B, was lost or destroyed; that it was executed and valid and that it existed at the time of the death of Jose B. Suntay. These circumstances also apply to the will (Exhibit P) which was executed in Amoy, China.

"The contents of the Chinese will is substantially the same as the draft (Exhibit B). Granting that the will executed in the Philippines is non-existent as contended by the oppositor, although the findings of this court is otherwise, the will executed and probated in China should be allowed and recorded in this court. All the formalities of the law in China had been followed in its execution, on account of which it was duly probated in the Amoy District Court. There is no cogent reason, therefore, why it should not be admitted and recorded in this jurisdiction.

"The said will (Exhibit P) in Chinese characters is presented as an alternate in case the will executed in the Philippines would not be allowed to probate, or as a corroborative evidence that the will, the draft of which is Exhibit B, has been duly executed in the Philippines by Jose B. Suntay.

"Rule 78 of the Rules of Court covers the allowance of will proved outside of the Philippines and administration of estate thereunder.

"Section 1 of said rule provides:

'Wills proved and allowed in the United States, or any state or territory thereof, or in a foreign country, according to the laws of such state, territory, or country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.'

"Section 2 of the same rule provides:

'When a copy of such will and the allowance thereof, duly authenticated, is filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.'

"This court has delved deep into the evidence adduced during the hearing with that penetrating scrutiny in order to discover the real facts; it has used unsparingly the judicial scapel; and it has winnowed the evidence to separate the grain from the chaff. All the facts lead to the inevitable conclusion that Jose B. Suntay, in his sound and disposing mind and not acting under

duress or undue influence, executed the will which is lost, the draft of which is Exhibit B, with all the necessary formalities prescribed by law. He, likewise, executed the second will (Exhibit P) in Amoy, China, which had been duly probated in Amoy District Court,—a corroborative evidence that the testator really executed the will. Copies of the said wills duly certified and under the seal of the court are appended hereto, marked Exhibits B and P, and they form part of this decision.

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the court is of the opinion and so declares that the draft of the will (Exhibit B) is, to all legal intents and purposes, the last will and testament of the deceased Jose B. Suntay. With costs against the oppositor, Federico C. Suntay."

Oppositor Federico C. Suntay filed on May 20, 1948, a motion for new trial and to set aside the decision rendered on April 19, 1948, to which the petitioner filed an opposition, followed by a reply filed by the oppositor and an answer on the part of the petitioner. Without reopening the case and receiving any new or additional evidence, the Court of First Instance of Bulacan, on September 29, 1948, promulgated the following resolution setting aside his first decision and disallowing the wills sought to be probated by the petitioner in his alternative petition filed on June 18, 1947:

"This is a motion for new trial and to set aside the decision legalizing the will of Jose B. Suntay and allowing and recording another will executed by him in Amoy, China.

"By virtue of this motion, this court is constrained to go over the evidence and the law applicable thereto with the view of ascertaining whether or not the motion is well founded. Both parties have presented extensive memoranda in support of their respective contentions.

"This court has gone over the evidence conscientiously, and it reiterates its finding of the same facts in this resolution. Whether or not the facts established by the petitioner, Silvino Suntay, warrant the legalization of the lost will and the allowance and recording of the will that was executed in Amoy, China, is therefore, the subject of this instant motion.

"A. As to the legalization of the Lost Will.—There is no question in the mind of this court that the original will which Jose B. Suntay, deceased, executed in the Philippines in the year 1929 was lost (Exhibit O, Decision of the Supreme Court). The evidence adduced by the petitioner during the hearing has established through the testimony of Judge Anastacio Teodoro and that of Go Toh (an attesting witness) that the will was executed by Jose B. Suntay, deceased, with all the formalities required by law. For the purpose of legalizing an original and existing will, the evidence on record is sufficient as to the execution and attesting in the manner required by law.

"Section 8 of Rule 77 provides as follows:

> 'SEC. 8. *Proof when witnesses dead or insane or do not reside in the Philippines.*—If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philippines the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will; and as evidence of the execution of the will, may

admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.'

"Section 11 of the said Rule also provides as follows:

'SEC. 11. *Subscribing witnesses produced or accounted for where contest.*—If the will is contested, all the subscribing witnesses present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of the subscribing witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. If all or some of the subscribing witnesses produced and examined testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law."

"The three attesting witnesses were Manuel Lopez, deceased, Alberto Barretto and Go Toh. The last two witnesses are still living; the former testified against and the latter in favor. In other words, the attesting witness, Go Toh, only, testified in his deposition in favor of the due execution of the will. Hence, the petitioner presented another witness, Judge Anastacio Teodoro, to establish and prove the due execution of the said will. Ana Suntay was also presented as a witness in rebuttal evidence. The testimony of Go Toh in his deposition as an attesting witness, coupled with the testimony of Judge Anastacio Teodoro who was able to examine the original will that was executed by Jose B. Suntay, deceased, when it was given to him by Go Toh for the purpose of filing the petition in court for its legalization, and could recognize the signatures of the testator as well as of the three attesting witnesses on the said original will is sufficient to convince the court that the original will was executed by the deceased Jose B. Suntay with all the formalities required by law. The original will, therefore, if it were presented in court to probate would be allowed to all legal intents and purposes. But it was not the original will that was presented, because it was lost, but an alleged draft (Exhibit B) of the said original will which does not bear the signatures of the testator and any of the attesting witnesses. The original will was duly executed with all the formalities required by law, but it was unfortunately lost; and the curtain falls for the next setting.

"The Court is now confronted with the legalization of the lost will—whether or not the draft (Exhibit B) should be admitted as secondary evidence in lieu of the lost will and allowed to probate.

"Section 6 of Rule 77 provides as follows:

'SEC. 6. *Proof of lost or destroyed will.—Certificate thereupon.*—No will shall be proved as a lost will or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, *nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.* When a lost will is proved, the provisions thereof must be distinctly stated and certified by the Judge, under the seal of the court, and the certificate must be

filed and recorded as other wills are filed and recorded.' (Italic Court's)

"From the above quoted provision of the law, it is clear that the petitioner should not only establish the execution and validity of the will, its existence at the time of the death of the testator, or its fraudulent and accidental destruction in the lifetime of the estator without his knoweldge, but also must *prove its provisions clearly and distinctly by at least two credible witnesses.* The exact language of the clause in the above quoted provision of the law is 'nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.' The legalization of a lost will is not so easy, therefore, as that of an originial will. The question, therefore, is boiled down to, and projected on the screen, in a very sharp focus; namely, the execution and validity must be established and the provisions must be clearly and distinctly proved by at least two credible witnesses.

"Granting that the execution and validity of the lost will have been established through the testimony of Judge Anastacio Teodoro and Go Toh, and perhaps superficially by the rebuttal witness, Ana Suntay, does it follow that the provisions of the lost will have been clearly and distinctly proved by at least two credible witnesses? A careful review of the evidence has revealed that at most the only credible witness who testified as to the provisions of the will was Judge Anastacio Teodoro, and yet he testified on the provisions of the lost will with the draft (Exhibit B) in his hands while testifying. It may be granted, however, that with or without the draft of the will (Exhibit B) in his hands, he could have testified clearly and distincly on the provisions of the said lost will, because he had kept the will in his safe, in his office, for three days, after opening it, and he is well versed in Spanish language in which the will was written. But did the attesting witness Go Toh, testify in his deposition and prove clearly and distinctly the provisions of the lost will? He did not, and he could not have done so even if he tried because the original will was not read to him nor by him before or at the signing of the same. It was written in Spanish and he did not and does not understand the Spanish language. Neither was there any occasion for him to have the contents of the said will, after its execution and sealing inside the envelope (Exhibit A), read to him, because it was opened only when Judge Teodoro had examined it and then subsequently snatched from Go Toh. Ana Suntay on rebuttal did not, likewise, prove clearly and distinctly the provisions of the said lost will, because she has not had enough schooling and she does not possess adequate knowledge of the Spanish language as shown by the fact that she had to testify in Tagalog on the witness stand.

"It is evident, therefore, that although the petitioner has established the execution and validity of the lost will, yet he has not proved clearly and distinctly the provisions of the will by at least two credible witnesses.

"B. *As to the Allowance and Recording of the will Executed in Amoy, China.*—Jose B. Suntay, while he was residing in China during the remaining years of his life, executed also a will, written in Chineses characters, the translation of which is marked Exhibit P. It was allowed to probate in the District Court of Amoy, China. The question is whether or not the said will should be allowed and recorded in this jurisdiction .

"Section 1 of Rule 78 provides as follows:

'SEC. 1. *Will proved outside Philippines may be allowed here.*—Will proved and allowed in the United States, or any

state or territory thereof, or in a foreign country, according to the laws of such state, territory, or country, may be allowed, filed, and recorded by the proper court of First Instance in the Philippines.'

"Section 2 of the same Rule also provides:

'SEC. 2. *Notice of hearing for allowance.*—When a copy of such will and the allowance thereof, duly authenticated, is filed with a petition for allowance in the Philippines by the executor or other person interested, in the Court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.'

"Sections 41 and 42 of Rule 123 provides as follows:

'SEC. 41. *Proof of Public or official record.*—An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or its territory, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of the office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.'

'SEC. 42. *What attestation of copy just state.*—Whenever a copy of writing is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.'

"In the case of Yu Changco *vs.* Tiaoqui, 11 Phil., 598, 599, 600, our Supreme Court said:

'Section 637 of the Code of Civil Procedure says that wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded in the Court of First Instance of the province in which the testator has real or personal estate on which such will may operate; but section 638 requires that the proof of the authenticity of a will executed in a foreign country must be duly "*authenticated.*" Such authentication, considered as a foreign judicial record, is prescribed by section 304, which requires the attestation of the clerk of the legal keeper of the records with the seal of the court annexed, if there be a seal, together with a certificate of the chief judge or presiding magistrate that the signature of either of the functionaries attesting the will is genuine, and, finally, the certification of the authenticity of the signature of such judge or presiding magistrate, by the ambassador, minister, consul, vice consul or consular agent of the United States in such foreign country. And, should the will be considered, from an administrative point of

view, as a mere official document "of a foreign country", it may be proved, "by the original, or by a copy certified by the legal keeper thereof, with a certificate, under the seal of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original". (Sec. 313, par. 8).'

"In the case of Fluemer *vs.* Hix, 54 Phil., 610, 611, 612, and 613, our Supreme Court said:

'It is the theory of the petitioner that the alleged will was executed in Elkins, West Virginia, on November 3, 1925, by Hix who had his residence in that jurisdiction, and that the laws of West Virginia govern. To this end, there was submitted a copy of section 3868 of Acts 1882, c. 84 as found in West Virginia Code, Annotated, by Hogg, Charles E., Vol. 2, 1914, p. 1690, and as certified to by the Director of the National Library. But this was far from compliance with the law. The laws of a foreign jurisdiction do not prove themselves in our courts. The courts of the Philippine Islands are not authorized to take judicial notice of the laws of the various States of the American Union. Such laws must be proved as facts. (In re Estate of Johnson (1918), 39 Phil., 156.) Here the requirements of the law were not met. There was no showing that the book from which an extract was taken was printed or published under the authority of the State of West Virginia, as provided in section 300 of the Code of Civil Procedure. Nor was the extract from the law attested by the certificate of the officer having charge of the original under the seal of the State of West Virginia, as provided in section 301 of the Code of Civil Procedure. No evidence was introduced to show that the extract from the laws of West Virginia was in force at the time the alleged will was executed.

* * * * * * *

'It was also necessary for the petitioner to prove that the testator had his domicile in West Virginia and not in the Philippine Islands. The only evidence introduced to establish this fact consisted of the recitals in the alleged will and the testimony of the petitioner.

"While the appeal was pending submission in this court, the attorney for the appellant presented an unverified petition asking the court to accept as part of the evidence the documents attached to the petition. One of these documents discloses that a paper writing purporting to be the last will and testament of Edward Randolph Hix, deceased, was presented for probate on June 8, 1929, to the clerk of Randolph County State of West Virginia, in vacation, and was duly proven by the oaths of Dana Vansley and Joseph L. Madden, the subscribing witnesses thereto, and ordered to be recorded and filed. It was shown by another document that, in vacation, on June 8, 1929, the clerk of court of Randolph County, West Virginia, appointed Claude E. Maxwell as administrator, *cum testamento annexo*, of the estate of Edward Randolph Hix, deceased. . . However this may be no attempt has been made to comply with the provisions of sections 637, 638, and 639 of the Code of Civil Procedure, for no hearing on the question of the allowance of a will said to have been proved and allowed in West Virginia has been requested. * * *.'

"Granting that the will of Jose B. Suntay which was executed in Amoy, China, was validly done in accordance with the law of the

Republic of China on the matter, is it necessary to prove in this jurisdiction the existence of such law in China as a prerequisite to the allowance and recording of the said will? The answer is in the affirmative as enunciated in Fluemer *vs.* Hix, *supra*, and in Yañez de Barnuevo *vs.* Fuster, 29 Phil., 606. In the latter case, the Supreme Court said:

> 'A foreign law may be proved by the certificate of the officer having in charge of the original, under the seal of the state or country. It may also be proved by an official copy of the same published under the authority of the particular state and purporting to contain such law. (Secs. 300 and 301, Act No. 190.)" (Syllabus.)

"The provisions of sections 300 and 301 of the Code of Civil Procedure (Act No. 190) are as follows:

> 'SEC. 300. *Printed laws of the State or Country.*—Books printed or published under the authority of the United States, or one of the States of the United States, or a foreign country, and purporting to contain statutes, codes, or other written law of such State or country or proved to be commonly admitted in the tribunals of such State or country an evidence of the written law thereof, are admissible in the Philippine Islands are evidence of such law.'
>
> SEC. 301. *Attested copy of Foreign Laws.*—A copy of the written law or other public writing of any state or country, attested by the certificate of the officer having charge of the original, under the seal of the state or country, is admissible as evidence of such law or writing.'

"The petitioner has presented in evidence the certification of the Chinese Consul General, Tsutseng T. Shen, of the existence of the law in China (Exhibit B–3), relative to the execution and probate of the will executed by Jose B. Suntay in Amoy, China (Exhibit P). Is that evidence admissible, in view of the provisions of Sections 41 and 42 of the Rules of the Rules of Court? Is the said certification of the Chinese Consul General in the Philippines a substantial compliance with the provisions of the above mentioned section 41 and 42 of our Rules of Court?

"This court has its doubts as to the admissibility in evidence of the Chinese Consul General in the Philippines of the existence of the laws of Republic of China relative to the execution and probate of a will executed in China. Such law may exist in China, but—

> 'An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. * * * If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.' (Sec. 41 of Rule 123.)

"The law of the Republic of China is a public or official record and it must be proved in this jurisdiction through the means prescribed by our Rules of Court. It is, therefore, obvious that the Chinese Consul General in the Philippines who certified as to the existence of such law is not *the officer having the legal custody of the record*, nor he is a deputy of such officer. And, if the office in which the record is kept is in a foreign country, the certificate

may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

It is clear, therefore, that the above provisions of the Rules of Court (Rule 123, sec. 41) not having been complied with, the doubt of this court has been dissipated, and it is of the opinion and so holds that the certification of the Chinese Consul General *alone* is not admissible as evidence in this jurisdiction.

"The evidence of record is not clear as to whether Jose B. Suntay, who was born in China, but resided in the Philippines for a long time, has become a Filipino citizen by a naturalization, or he remained a citizen of the Republic of China. The record does not, likewise, show with certainty whether or not he had changed his permanent domicile from the Philippines to Amoy, China. His change of permanent domicile could only be inferred. But the question of his permanent domicile pales into insignificance in view of the overtowering fact that the law of China pertinent to the allowance and recording of the said will in this jurisdiction has been satisfactorily established by the petitioner.

"Both the petitioner and the oppositor have extensively argued in their respective memorandum and in the oral argument in behalf of the oppositor the question of estoppel. The consideration of the points raised by them would open the door to the appreciation of the intrinsic validity of the provisions of the will which is not of moment at the present stage of the proceeding. While the probate of a will is conclusive as to the compliance with all formal requisites necessary to the lawful execution of the will, such probate does not affect the intrinsic validity of the provisions of the will. With respect to the latter the will is governed by the substantive law relative to descent and distribution. (In re Johnson, 39 Phil., 157).

"In view of the foregoing, and upon reconsideration, the previous decision rendered in this case allowing the will (Exhibit B) and allowing and recording the foreign will (Exhibit P) is set aside; and this court is of the opinion and so holds that the said two wills should be, as they are hereby, disallowed. Without special pronouncement as to cost."

It is very significant that in the foregoing resolution, the Court of First Instance of Bulacan "reiterates its finding of the same facts in this resolution." and merely proceeds to pose the sole question "whether or not the facts established by the petitioner, Silvino Suntay, warrant the legalization of the lost will and allowance and recording of the will that was executed in Amoy, China." The somersault executed by the trial court is premised on the ground that "although the petitioner has established the execution and validity of the lost will, yet he has not proved clearly and distinctly the provisions of the will by at least two credible witnesses"; and that, assuming that the will of Jose B. Suntay executed in Amoy, China, was in accordance with the law of the Republic of China, the certification of the Chinese Consul General in the Philippines as to the existence of such law is not admissible evidence in this jurisdiction. In effect the resolution on the motion for reconsideration promulgated by the trial

court, and the decision of the majority herein, adopt the position that the testimony of Judge Anastacio Teodoro as to the provisions of the lost will, while credible and perhaps sufficient in extent, is not corroborated by the witnesses Go Toh and Ana Suntay and, therefore, falls short of the requirement in section 6, Rule 77, of the Rules of Court that the provisions of the lost will must be "clearly and distinctly proved by at least two witnesses." That this requirement was obviously construed to mean that the exact provisions are to be established, may be deduced from the following dialogue between His Honor, Judge Potenciano Pecson, and Attorney Teofilo Sison, new counsel for oppositor Federico C. Suntay, who appeared for the first time at the *ex parte* hearing of oppositor's motion for new trial on September 1, 1949:

"COURT: However, Rule 77, Section 6, provides in proving a lost will, the provisions of the lost will must be distinctly stated and certified by the Judge.

"ATTY. TEOFILO SISON: Yes, Your Honor.

"COURT: That presupposes that the Judge could only certify to the *exact provisions* of the will from the evidence presented.

"ATTY. TEOFILO SISON: That is our contention, provided that provision is clearly established by two credible witnesses so that the Court could state that in the decision, we agree, that is the very point.

(t.s.n. 75, Session of Sept. 1, 1948)"

The sound rule, however, as we have found it to be, as to the degree of proof required to establish the contents of a lost or destroyed will, is that there is sufficient compliance if two witnesses have substantiated the provisions affecting the disposition of the testator's properties; and this is especially necessary to prevent the "perpetration of a fraud by permitting a presumption to supply the suppressed proof," to keep a wrong-doer from utilizing the rule as his "most effective weapon," or to avoid the enjoyment of a "premium from the rascality of one whose interests might suggest the destruction of a will."

"Section 1865 of the Code requires that the provisions of a lost will must be clearly and distinctly proved by at least two credible witnesses before it can be admitted to probate; but this section must receive a liberal construction (Hook *vs.* Pratt, 8 Hun. 102–109) and its spirit is complied with by holding that *it applies only to those provisions which affect the disposition of the testator's property and which are of the substance of the will.*"

"The allegations of the contents of the will are general, and under ordinary circumstances, would be insufficient; but the fact alleged, if proven as alleged, would certainly authorize the establishment of the will so far as its bequests are concerned. To require that a copy of the will or the language of the bequests, in detail, should be pleaded, where no copy has been preserved, and where the memory of the witnesses does not hold the exact words, would not only deny the substance for mere form, but would offer a premium upon the rascality of one whose interests might suggest the destruction of a will. As said in Anderson *vs.* Irwin, 101, 111.. 411: "The instrument in controversy having been

destroyed without the fault of the defendant in error * * * and there not appearing to be any copy of it in existence, it would *be equivalent to denying the complainant relief altogether to require her to prove the very terms in which it was conceived. All that could reasonably be required of her under the circumstances would be to show in general terms the disposition which the testator made of his property by the instruments;* that it purported to be his will and was duly attested by the requisite number of witnesses.' In Allison *vs.* Allison, 7 Dana 91, it was said in speaking of the character and extent of proof required in such a case: 'nor is there any just ground to object to the proof because the witnesses have not given the language of the will or the substance thereof. *They have given the substance of the different devises as to the property or interest devised, and to whom devised and we would not stop, in the case of a destroyed will, to scan with rigid scrutiny the form of the proof, provided we are satisfied of the substance of its provisions.'* " (Jones vs. Casler, 139 Ind., 392, 38 N. E., 812).

"The evidence in the case falls short of establishing the existence of such a writing, except as it may be presumed, under the maxim Omnia preasumuntur in odium spoliatoris.' There was evidence tending to show that the second will of Anne Lambie was in the possession of Francis Lambie, and that it came to the hands of the proponents, warranting the inference that it has been suppressed or destroyed. If from this evidence the jury found such paper destroyed the law permits the presumption that it was legally drawn and executed, notwithstanding the terms of the statute, which requires the revoking instrument to be formally executed. *If a will be lost, secondary evidence may be given of its contents; if suppressed or destroyed, the same is true; and, if necessary, the law will prevent the perpetration of a fraud by permitting a presumption to supply the suppressed proof. We cannot assent to the proposition that the statute is so rigid as to be the wrongdoer's most effective weapon. The misconduct once established to the satisfaction of the jury, it is no hardship to the wrongdoer to say. 'Produce the evidence in your possession, or we will presume that your opponent's contention is true.' When one deliberately destroys, or purposely induces another to destroy, a written instrument subsequently become a matter of judicial inquiry between the spoliator and an innocent party, the latter will not be required to make strict proof of the contents of such instrument in order to establish a right founded thereon.* Brook, Leg. Max. 576, Preston *vs.* Preston, 132, Atl. 55, 61, (Re Lambie's Estate, 97, Mich, 55, 56 N. W. 225)"

Judged from the standard set forth in the foregoing authorities, and bearing in mind that the circumstances of this case lead to the only conclusion that the loss of the will in question is of course imputable to those whose interests are adverse to the petitioner and the widow Lim Billian, we have no hesitancy in holding the view that the dispositions of the properties left by the deceased Jose B. Suntay as provided in his will which was lost or snatched in the manner recited in the decision of this Court in the case of Lim Billian *vs.* Suntay, 63 Phil., 793–797, had been more than sufficiently proved by the testimony of Judge Anastacio Teodoro, Go Toh, and Ana Suntay, supported conclusively by the draft of the lost will presented in evidence as Exhibit "B," and even by the testimony of oppositor Federico C. Suntay himself.

It is to be recalled that the trial Judge, in his first decision of April 19, 1948, made the following express findings with respect to the testimony of Judge Teodoro: "Judge Anastacio Teodoro testified that he opened the sealed envelope when it was given to him by Go Toh preparatory to the presentation of the petition for the probate of the said will. As the lawyer entrusted with that task, he had to examine the will and have it copied to be reproduced or appended to the petition. He could not do otherwise if he is worth his salt as a good lawyer. He could not perform the stunt of 'blind flying' in the judicial firmament. Every step must be taken with certainty and precision under any circumstances. He could not have talked about the attorney's fees with Go Toh, unless he has not examined the will beforehand. And, when he was shown Exhibit B, he did not hesitate in declaring that it was the exact draft of the will that was inside the envelope (Exhibit A), the testimony of Atty. Alberto Barretto to the contrary notwithstanding."

We should not forget, in this connection, that in the resolution on the motion for reconsideration the trial Judge reiterated the findings in his decision, although as regards the testimony of Judge Teodoro, admittedly "the only credible witness who testified as to the provisions of the will," he observed that Judge Teodoro had the draft Exhibit "B" in his hands while testifying. We cannot see any justification for the observation, assuming that Judge Teodoro consulted the draft, since even the trial Judge granted that he "could have testified clearly and distinctly on the provisions of the said lost will, because he had kept the will in his safe, in his office, for three days, after opening it, and he is well versed in Spanish language in which the will was written." As a matter of fact, however, it is not true that Judge Teodoro had the draft in question before him while testifying, as may be seen from the following passages of the transcript:

"Q. And, have you read that will which was inside this envelope, Exhibit A?—A. Yes.

"Q. Do you remember more or less the contents of the will?

"ATTY. FERRIN: With our objection, the best evidence is original will itself, Your Honor.

"ATTY. RECTO: We are precisely proving by means of secondary evidence, the contents of the will, because according to the Supreme Court, and that is a fact already decided, that the will of Jose B. Suntay was lost and that is *res adjudicata*.

"COURT: Witness may answer.

"WITNESS: I remember the main features of the will because as I said I was the one fighting for the postponement of the hearing of the intestate case because I was asked by Don Alberto Barretto to secure the postponement until the will that was executed by the deceased is sent here by the widow from China, with whom we communicated with several letters, and when the will arrived I had to check the facts as appearing in the will, and examined

fully in connection with the facts alleged in the intestate, and there was a striking fact in the intestate that Apolonio Suntay has.

"ATTY. FERRIN: (Interrupting) May we ask that the witness answer categorically the questions of Atty. Recto, it seems that the answers of the witness are kilometric . . .

"ATTY. RECTO: Sometimes the question cannot be answered fully unless the witness would relate and give all the facts.

"COURT: The Attorney for the Administrator may move for the striking out of any testimony that is not responsive to the question.

"ATTY. FERRIN: That is why, our objection, the answer is out of the question.

"COURT: Atty. Recto may propound another question.

"ATTY. RECTO: I heard the witness was saying something and he has not finished the sentence, and I want to ask the Court just to allow the witness to finish his sentence.

"COURT: You may finish.

"WITNESS: A. There was a sentence, the poist I was trying to check first was whether the value of the estate left by the deceased was SIXTY THOUSAND PESOS (₱60,000.00) as Apolonio Suntay made it appear in his petition, and when I looked at the original will, I found out that it was several hundred thousand pesos, several thousands of pesos, hundreds of pesos, that was very striking fact to me because the petition for intestate was for SIXTY THOUSAND PESOS (₱60,000.00), and I came to know that it was worth more than SEVEN HUNDRED THOUSAND (₱700,000.00) PESOS.

"Q. Do you remember, Judge, the disposition of the will, the main disposition of the will?—"A. Yes, because our clients were the widow, Maria Natividad Lim Billian, and his son, Silvino, the only son in the second marriage, that was very important for me to know.

"Q. How were the properties distributed according to that will?—A. The properties were distributed into three (3) parts, one part which we call *legitima corta*, were equally distributed to the ten (10) children, nine (9) in the first marriage, and one (1) in the second mariage with Maria Natividad Lim Billian. The other third, the betterment was given to four (4) children, Concepcion, and Apolonio getting a quite substantial share in the betterment, around SIXTY THOUSAND (₱60,000.00) for Concepcion, Apolonio the the amount of SEVENTY THOUSAND (₱70,000.00) PESOS or little over, and then about ONE HUNDRED THOUSAND ₱100,000.00) PESOS of the betterment in favor of Silvino, the minor of the second marriage, and to Jose equal to Concepcion.

"Q. So the betterment, as I understand from you went to four (4) children?—A. Yes.

"Q. Silvino in the second mariage, Concepcion, Apolonio and Jose in the first marriage?—A. Yes.

"Q. What about the free disposal?—A. The free disposal was disposed in favor of the widow, Maria Natividad Lim Billian and Silvino, his minor son in equal parts.

"Q. What about, if you remember, if there was something in the will in connection with that particular of the usufruct of the widow?—A. It was somewhat incorporated into the assets of the estate left by the deceased.

"Q. Do you remember the number of pages of which that will consisted?—A. Twenty-three (23) pages.

"Q. Do you remember if the pages were signed by the testator?—A. Yes, sir, it was signed.

"Q. And the foot of the testament or the end of the testament, was it signed by the testator?—A. Yes, sir, and the attestation clause was the last page signed by the three instrumental witnesses,

Alberto Barretto, one Chinaman Go Toh, and Manuel Lopez, my former Justice of the Peace of Hagonoy.

"Q. Do you remember if these witnessess signed on the different pages of the will?—A. Yes, sir, they signed with their name signatures."

* * * * * * *

"Q. Showing you this document consisting of twenty-three (23) pages in Spanish and which document appears already attached to this same testamentary proceedings and already marked as EXHIBIT B, will you please tell the Court if and for instance on page eight (8) of this document, *pagina octavo*, it says, there are handwritings in pencil, some of which read as follows: 'Los cinco-octavos (5/8) partes corresponde a mi hijo Emiliano', can you recognize whose handwriting is that?—A. From my best estimate it is the handwriting of Don Alberto Barretto.

"Q. About the end of that same page eight (8) *página octavo*, of the same document Exhibit B, there is also this handwriting in pencil which reads: 'La otra sexta parte (6.a) corresponde a Bonifacio Lopez', can you recognize that handwriting?—A. Yes, sir, this is the handwriting of Don Alberto Barretto, and I wish to call the attention of the Court to compare letter "B" which is in capital letter with the signature of Don Alberto Barretto in the envelope, 'Alberto Barretto' and stroke indentifies one hands as having written those words.

"Q. *Willi you please go over cursorily this document, Exhibit B, composed of twenty-three (23) pages and please tell the Court if this document had anything to do with that will which according to you was contained in the envelope, Exhibit A?*—A. This exactly the contents of the original will which I received and kept in my office inside the safe for three (3) days, and I precisely took special care in the credits left by the deceased, and I remember among them, were the De Leon family, and Sandiko, well known to me, and then the disposition of the estate, divided into three (3) equal parts, and I noticed that they are the contents of the will I read."

His Honor, Judge Pecson, was positive in his first decision that "the testimony of Judge Anastacio Teodoro is corroborated by Go Toh, one of the attesting witnesses, in his deposition (Exhibit D–1)." Yet in setting aside his first decision, he remarked that Go Toh's testimony did not prove clearly and distinctly the provisions of the lost will, because: "He did not, and he could not have done so even if he tried because the original will was not read to him nor by him before or at the signing of the same. It was written in Spanish and he did not and does not understand the Spanish language. Neither was there any occasion for him to have the contents of the said will, after its execution and sealing inside the envelope (Exhibit A), read to him, because it was opened only when Judge Teodoro had examined it and then subsequently snatched from Go Toh."

The later position thus taken by Judge Pecson is palpably inconsistent with the following unequivocal statements of Go Toh contained in his deposition taken in Amoy, China, on April 17, 1938, and in oppositor's Exhibit "6":

"26. State what you know of the contents of that will.

". . . Regarding (1) expenditures (2) Philippine citizenship; (3) Distribution of estates among children (4) taking care of grave lot; (5) guardianship of Silvino Suntay and (6) after paying his debts he will have approximately 720,000 pesos left. This amount will be divided into three equal parts of 240,000 pesos each. The first part is to be divided equally among the ten children born by the first and second wives and the second part among the three sons Silvino Suntay, 76,000 approximately; Apolonio Suntay, 50,000 pesos approximately; Jose Suntay and Concepcion Suntay, 36,000 each approximately. The third part is to be divided between Maria Lim Billian and Silvino Suntay; each will get approximately 110,000 pesos. Silvino Suntay will get a total of 210,000 pesos approximately, Maria Natividad Lim Billian a total of 290,000 approximately, and Apolonio Suntay a total of 80,000 approximately, Concepcion Suntay and Jose Suntay will get 60,000 pesos each approximately. The rest of the children will get approximately 29,000 each. The way of distribution of the property of Jose B. Suntay, movable and immovable, and the outstanding debts to be collected was arranged by Jose B. Suntay."

* * * * * * *

"78. On the occasion of the execution of the testament of Jose B. Suntay, state whether or not you say Exhibit B.— . . . Yes.

"79. In the affirmative case, state if you know who had the possession of Exhibit B and the testament the first time you saw them on that occasion.— . . . Yes, I know who had possession of them.

"80. Can you say whether or not Jose B. Suntay happened to get those documents later on, on that same occasion?— . . . He got them after the execution.

"81. Please name the person who gave those documents to Mr. Suntay.— . . . Alberto Barretto gave the documents to Jose B. Suntay.

"82. Did the person who gave those documents to Suntay say anything to him (Suntay) at the time of giving them?— . . . Yes.

"83. If so what was it that he said, if he said any?— . . . He said, 'You had better see if you want any correction.'

"84. Why did Mr. Suntay do after those documents were given to him?— . . . Jose B. Suntay looked at them and then gave one copy to Manuel Lopez for checking.

"85. State whether or not Mr. Suntay gave one of those documents to another man.— . . . Yes.

"86. In the affirmative case, can you say which of the two documents was given and who the man was?— . . . Yes he gave Exhibit B to Manuel Lopez.

"87. State whether or not Mr. Suntay said something to the man to whom he gave one of those documents.— . . . Yes.

"88. In the affirmative case can you repeat more or less what Mr. Suntay said to that man?— . . . He told him to read it for checking.

"89. State if you know what did that man do with one of those documents given to him.— . . . He took it and read it for checking.

"90. What did in turn Mr. Suntay do with the other one left with him?— . . . Jose B. Suntay looked at the original and checked them.

"91. What was done with those documents later on if there was anything done with them?— . . . After checking, Jose B. Suntay put Exhibit B in his pocket and had the original signed and executed.

"92. What was done with the testament of Jose B. Suntay after it was signed by the testator and its witnesses?— . . . It was taken away by Jose B. Suntay." (Exhibits D, D-1.)

"Q. Did you know the contents of this envelope?—"A. I knew that it was a will.

"Q. But did you know the provisions of the will?—"A. It is about the distribution of the property to the heirs.

"Q. *Did you know how the property was distributed according to the will?*—"A. *I know that more than* ₱500,000.00 *was for the widow and her son, more than* ₱100,000.00 *for the heirs that are in the family.*" (Exhibit "6", p. 28).

Q. You stated that you were one of the witnesses to the will and that the will was written in Spanish. Was it written in typewriting or in handwriting of somebody?—"A. That will was written in typewriting.

"Q. Did you read the contents of that will, or do you know the contents of that will?—"A. No, sir, because I do not know Spanish.

"Q. How do you know that it was the will of Jose B. Suntay?—"A. Because I was the one of the signers and I saw it." (Exhibit "6", p. 19.)

"22. Do you understand the language in which that will was written?— . . . . I know a little Spanish.

"23. Do you talk or write that language?— . . . . I can write and talk a little Spanish." (Exhibits D, D-1.)

As to Ana Suntay's corroborating testimony, Judge Pecson aptly made the following findings: "Ana Suntay, one of the heirs and who would be affected adversely by the legalization of the will in question, also testified on rebuttal that she saw the original will in the possession of Manuel Suntay immediately after the snatching. She read it and she particularly remembers the manner in which the properties were to be distributed. Exhibit B was shown to her on the witness stand and she declared that the provision regarding the distribution of the properties in said Exhibit B is the same as that contained in the original will. Said testimony of Ana Suntay, therefore, belies the testimony of Atty. Alberto Barretto." And yet in the resolution on the motion for new trial, the trial Judge had to state that "Ana Suntay on rebuttal did not, likewise, prove clearly and distinctly the provisions of the said lost will, because she has not had enough schooling and she does not possess adequate knowledge of the Spanish language as shown by the fact that she had to testify in Tagalog on the witness stand." The patent error committed by Judge Pecson in reversing his views as regards Ana's testimony, is revealed readily in the following portions of the transcript:

"P. Cuantas páginas tenia aquel documento a que usted se refiere?—"R. Probablemente seria más de veinte (20) páginas.

"P. No serian treinta (30) páginas?—"ABOGADO RECTO: La testigo ha contestado ya que mas de veinte (20).

"JUZGADO: Se estima.

"ABOGADO MEJIA:

"P. Usted personalmente leyo el documento?—"R. Lo leyo mi hermano en presencia mia.

"P. La pregunta es, si usted personalmente ha leido el documento?—"R. *Si, lo he visto.*

"P. No solamente le pregunto a usted si Vd. ha visto el testamento sino *si usted ha leido personalmente el testamento?*—"R. *Si la parte de la adjudicación lo ha leido* para asegurarme a que porcion puede corresponder a cada uno de nosotros.

"P. Puede usted repetir poco mas o menos esa porción a que se hacia la distribución del alegado testamento?—"R. Como ya he declarado, que las propiedades de mi difunto padre se habián dividido en tres partes, una tercera parte se nos ajudica a nosotros diez (10) hijos en primeras nupcias y segunda nupcia. la segunda tercera parte los ajudica a la viuda y a Silvino, y la otra tercera parte se lo ajudica a sus hijos como mejora a Silvino, Apolonio, Concepcion y Jose.

"P. *Eso, tal como usted personalmente lo leyo en el documento?*—"R. *Si Senor.*

"P. Quiero usted tener la bondad, señora, de repetir poco mas o menos las palabras en ese documento que se distribuía las propiedades del difunto padre usted como usted relata aquí?—"ABOGADO RECTO: Objetamos a la pregunta por falta de base, porque ella solamente se fijo en la parte como se distribuian las propiedades pero no ha dicho la testigo que ella lo ha puesto de memoria, ni Vd. ha preguntado en que lenguaje estaba escrito el testamento . . .

"JUZGADO: Se estima.

"ABOGADO MEJIA:

"P. Sabe usted en que lenguaje estaba redactado el documento que usted leyo personalmente?—"R. En Castellano.

"P. Puede usted repetirnos ahora en Castellano algunas frases o palabras como se hizo la distribución en equel supuesto testamento?—"ABOGADO RECTO: Objeción, por falta de base, uno puede entender el español y sin embargo no podra repetir lo que ha leido, y no se saba todavia si ha estudiado el español bastante hasta el punto de poder hablarlo.

"JUZGADO: Se estima.

"ABOGADO MEJIA:

"P. Usted dijo que estaba puesto en castellano el supuesto testamento que Vd. leyó, usted posse el castellano?—"R. *Yo entiendo castellano, pero no puedo hablar bien.*

"P. Usted estudió el castellano en algun colegio?—"R. Si, señor, en Sta. Catalina.

"P. Cuantos años?—"R. Nuestros estudios no han sido contiuos porque mi padre nos ingresaba en el colegio y después nos sacaba para estar afuera, y no era continuo nuestro estudio.

"P. Pero en total, como cuantos meses o años estaba usted en el colegio aprendiendo el castellano?—"R. Unos cuatro o cinco años.

"P. Entonces usted puede leer el castellano con facilidad, señora?—"R. Si, castellano sencillo puedo entender y lo puedo leer.

"P. Usted entiende las preguntas que se le dirigían aquí en castellano sin interpretación o sin el interprete?—R. Si, Señor.

"P. Puede usted contestar en castellano?—"R. Bueno, pero como usted debe comprender quisiera asegurarme del significado antes de contestar, por eso quiero que la pregunta se me traduzca antes, asi puedo contestar debidamente." (t.s.n. pp. 533–534.)

We are really at a loss to understand why, without any change whatsoever in the evidence, the trial Judge reversed his first decision, particularly when he announced therein that "it is now incumbent upon this court to delve into the evidence whether or not Jose B. Suntay, deceased, left a will (the draft of which is Exhibit B) and another will which was executed and probated in Amoy, China." His action is indeed surprising when we take into account the various circumstantial features

presently to be stated, that clearly confirm the testimony of Judge Anastacio Teodoro, Go Toh and Ana Suntay, or otherwise constitute visible *indicia* of oppositor's desire to frustrate the wishes of his father, Jose B. Suntay.

In our opinion the most important piece of evidence in favor of the petitioner's case is the draft of the lost will, Exhibit B. Its authenticity cannot be seriously questioned, because according to the trial Judge himself, oppositor's own witness, Atty. Alberto Barretto, admitted it to be "identical in substance and form to the second draft which he prepared in typewriting." Indeed, all the A's and B's in the handritten insertions on the draft are very similar to those in Barretto's admittedly genuine signature on the envelope, Exhibit "A". The finding of Judge Pecson on this point in his first decision (reiterated expressly in the resolution on the motion for new trial), should control, not only because it is in accordance with the evidence but because the oppositor had failed and did not even attempt to have the trial Judge reconsider or reverse his factual conclusions. The draft, Exhibit "B" having been positively identified by the witnesses for the petitioner to be an exact copy of the lost will of Jose B. Suntay, is therefore conclusive. Oppositor's effort to show that said draft was never signed in final form, and was thought of merely to deceive petitioner's mother, Lim Billian, and that the will actually executed and put in the envelope, Exhibit "A", provided that the testator's estate would be divided equally among his heirs, as in the case of intestacy, was necessarily futile because, if this allegation is true, the will would not have been "snatched" from Go Toh—and the loss certainly cannot be imputed to the widow Lim Billian or the petitioner; the snatched will would have been produced to put an end to petitioner's and his mother's claim for greater inheritance or participation under the lost will; and the envelope containing the first will providing for equal shares, would not have been entrusted to the care and custody of the widow Lim Billian.

It is very noteworthy that out of the nine children of the first marriage, only Angel, Jose and Federico Suntay had opposed the probate of the will in question; the rest, namely, Ana, Aurora, Concepcion, Lourdes, Manuel and Emiliano Suntay, having expressly manifested in their answer that they had no opposition thereto, since the petitioner's alternative petition "seeks only to put into effect the testamentary disposition and wishes of their late father." This attitude is significantly an indication of the justness of petitioner's claim, because it would have been to their greater advantage if they had sided with oppositor Federico Suntay in his theory of equal inheritance for all the children of Jose B. Suntay. Under the lost will or its draft Exhibit "B", each of the Suntay

children would receive only some ₱25,000.00, whereas in case of intestacy or under the alleged will providing for equal shares, each of them would receive some ₱100,000.00. And yet the Suntay children other than Angel, Jose and Federico had chosen to give their conformity to the alternative petition in this case.

Another unequivocal confirmation of the lost will is the will which Jose B. Suntay executed in Amoy, Fookien, China, on January 4, 1931, and probated in Amoy District Court, China, containing virtually the same provisions as those in the draft Exhibit "B". What better evidence is there of a man's desire or insistence to express his last wishes than the execution of a will, reiterating the same provisions contained in an earlier will. Assuming that the Chinese will cannot be probated in this jurisdiction, its probative value as corroborating evidence cannot be ignored.

Oppositor himself had admitted having read the will in question under which the widow Lim Billian was favored; and this again in a way goes to corroborate the evidence for the petitioner as to the contents of the will sought to be probated.

"COURT:

"Q. Have you read the supposed will or the alleged will of your father?—"A. Yes, sir.

"COURT:

"Q. *Can you tell the court the share or participation in the inheritance of Maria Natividad Lim Billian according to the will?*—"A. *Yes sir, she will inherit, I think, two thirds* (⅔) *of the estate, in other words she is the most favored in the will, so when they sold that, they sold everything,* they are selling everything even the conjugal property." (t. s. n. 228–229.)

The decision of the majority leans heavily on the testimony of Atty. Alberto Barretto, forgetful perhaps of the fact that the trial Judge gave no credence to said witness. It should be repeated that Judge Pecson reiterated in the resolution on the motion for new trial all his findings in the first decision. If, as Atty. Barretto testified, Lim Billian was entitled under the will actually signed by Jose Suntay only to ₱10,000.000, in addition to properties in China valued at ₱15,000.00, the fees of ₱25,000.00 admittedly asked by him would absorve her entire inheritance; and this would normally not be done by any law practitioner. Upon the other hand, there is evidence to the effect that Atty. Barretto might have become hostile to the petitioner and his mother Lim Billian in view of the latter's refusal to agree to the amount of ₱25,000.00 and her offer to pay only ₱100.00. There is also evidence tending to show that as early as 1942, Atty. Barretto was paid by oppositor Federico Suntay the sum of ₱16,000.00 which, although allegedly for services in the testate proceedings, was paid out of the

personal funds of said oppositors to supply Atty. Barretto's needs. This circumstance perhaps further explains why the latter had to support the side of Federico Suntay.

We have quoted in full the decision of this court in the "snatching" case and the first decision of Judge Pecson in this case, both in the hope and in the belief (1) that the first would reveal the manner by which those adversely affected had planned to prevent the last wishes of the deceased Jose B. Suntay from being carried out, and (2) that the second, by the facts correctly recited therein and by the force and accuracy of its logic would amply show the weakness and utter lack of foundation of the resolution on the motion for reconsideration. We have set forth at length pertinent portions of the testimony of various witnessess to demonstrate more plainly the plansibility of the original decision of Judge Pecson, and the latter's consequent bad judgment in having forced himself to accomplish a somersault, a feat which the majority, in my opinion, have mistakenly commended. We have found this to be one of the cases of this court in which we have had occasion to participate, where there can be absolutely no doubt as to the result—outright reversal—for which, with due respect to the majority opinion, we vote without hesitancy.

Decree affirmed.

5 November 1954

RESOLUTION

PADILLA, *J.:*

This is a motion for reconsideration of the decision promulgated on 31 July 1954, affirming the decree of the Court of First Instance of Bulacan which disallowed the alleged last will and testament executed in November 1929 and the alleged last will and testament executed in Kulangsu, Amoy, China, on 4 January 1931, by José B. Suntay, without pronouncement as to costs, on grounds that will presently be taken up and discussed.

Appellant points to an alleged error in the decision where it states that—

* * * This petition was denied because of the loss of said will after the filing of the petition and before the hearing thereof, * * *

because according to him the "will was lost before not after (the) filing of the petition." This slight error, if it is an error at all, does not, and cannot, alter the conclusions and pronouncements made in the judgment rendered in the case. In his alternative petition the appellant alleges:

4. That on October 15, 1934, María Natividad Lim Billian, the mother of herein petitioner filed a petition in this court for the allowance and probate of a last will and testament executed, and signed in the Philippines in the year 1929 by said deceased José B. Suntay. (P. 3, amended record on appeal.)

If such last will and testament was already lost or destroyed at the time of the filing of the petition by María Natividad Lim Billian (15 October 1934), the appellant would have so stated and alleged. If Anastacio Teodoro, a witness for the appellant, is to be believed when he testified—

> * * * that one day in November 1934 (p. 273, t. s. n., hearing of 19 January 1948), * * * Go Toh arrived at his law office in the De los Reyes Building and left an envelope wrapped in red handkerchief [Exhibit C] (p. 32, t. s. n., hearing of 13 October 1947); * * *

and—

> If the will was snatched after the delivery thereof by Go Toh to Anastacio Teodoro and returned by the latter to the former because they could not agree on the amount of fees, * * *

then on 15 October 1934, the date of the filing of the petition, the will was not yet lost. And if the facts alleged in paragraph 5 of the appellant's alternative petition which states:

> That this Honorable Court, after hearing, denied the aforesaid petition for probate filed by María Natividad Lim Billian in view of the loss and/or destruction of said will *subsequent* to the filing of said petition and *prior* to the hearing thereof, and the alleged insufficiency of the evidence adduced to establish the loss and/or destruction of the said will, (Italics supplied. P. 3, amended record on appeal.)

may be relied upon, then the alleged error pointed out by the appellant, if it is an error, is due to the allegation in said paragraph of his alternative petition. Did the appellant allege the facts in said paragraph with reckless abandon? Or, did the appellant make the allegation as erroneously as that which he made in paragraph 10 of the alternative petition that "his will which was lost and ordered *probated* by our Supreme Court in G. R. No. 44276, above referred to?" (P. 7, amended record on appeal.) This Court did not order the probate of the will in said case because if it did, there would have been no further and subsequent proceedings in the case after the decision of this Court referred to had been rendered and had become final. Be that as it may, whether the loss of the will was before or subsequent to the filing of the petition, as already stated, the fact would not affect in the slightest degree the conclusions and pronouncements made by this Court.

The appellant advances the postulate that the decision of this Court in the case of Lim Billian *vs.* Suntay, G. R. No. 44276, 63 Phil., 793, constitutes *res judicata* on these points: (a) that only one will was prepared by attorney Barretto, and (b) that the issue to be resolved by the trial court was whether the draft (Exhibit B) is a true copy or draft of the snatched will, and contends that these points already adjudged were overlooked in the ma-

jority opinion. The decision of this Court in the case referred to does not constitute *res judicata* on the points adverted to by the appellant. The only point decided in that case is that "the evidence is sufficient to establish the loss of the document contained in the envelope." In the opinion of this Court, this circumstance justified "the presentation of secondary evidence of its contents and of whether it was executed with all the essential and necessary legal formalities." That is all that was decided. This Court further said:

> The trial of this case was limited to the proof of loss of the will, and from what has taken place we deduce that it was not petitioner's intention to raise, upon the evidence adduced by her, the other points involved herein, namely, as we have heretofore indicated, whether Exhibit B is a true copy of the will and whether the latter was executed with all the formalities required by law for its probate. The testimony of Alberto Barretto bears importantly in this connection. (P. 796, *supra.*)

Appellant's contention that the question before the probate court was whether the draft (Exhibit B) is a true copy or draft of the snatched will is a mistaken interpretation and view of the decision of this Court in the case referred to, for if this Court did make that pronouncement, which, of course, it did not, such pronouncement would be contrary to law and would have been a grievous and irreparable mistake, because what the Court passed upon and decided in that case, as already stated, is that there was sufficient evidence to prove the loss of the will and that the next step was to prove by secondary evidence its due execution in accordance with the formalities of the law and its contents, clearly and distinctly, by the testimony of at least two credible witnesses.[1]

The appellant invokes Rule 133 to argue that Rule 77 should not have been applied to the case but the provisions of section 623 of the Code of Civil Procedure (Act No. 190), for the reason that this case had been commenced before the Rules of Court took effect. But Rule 133 cited by the appellant provides:

> These rules shall take effect on July 1, 1940. They shall govern all cases brought after they take effect, and *also all further proceedings in cases then pending*, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply. (*Italics supplied.*)

So, Rule 77 applies to this case because it was a further proceedings in a case then pending. But even if section 623 of the Code of Civil Procedure were to be applied, still the evidence to prove the contents and due execution of the will and the fact of its unauthorized destruction, cancellation, or obliteration must be established "by full

[1] Section 6, Rule 77.

evidence to the satisfaction of the Court." This requirement may even be more strict and exacting than the two-witness rule provided for in section 6, Rule 77. The underlying reason for the exacting provisions found in section 623 of Act No. 190 and section 6, Rule 77, the product of experience and wisdom, is to prevent impostors from foisting, or at least to make for them difficult to foist, upon probate courts alleged last wills or testaments that were never executed.

In commenting unfavorably upon the decree disallowing the lost will, both the appellant and the dissenting opinion suffer from an infirmity born of a mistaken premise that all the conclusions and pronouncements made by the probate court in the first decree which allowed the probate of the lost will of the late José B. Suntay must be accepted by this Court. This is an error. It must be borne in mind that this is not a petition for a writ of certiorari to review a judgment of the Court of Appeals on questions of law where the findings of fact by said Court are binding upon this Court. This is an appeal from the probate court, because the amount involved in the controversy exceeds ₱50,000, and this Court in the exercise of its appellate jurisdiction must review the evidence and the findings of fact and legal pronouncements made by the probate court. If such conclusions and pronouncements are unjustified and erroneous this Court is in duty bound to correct them. Not long after entering the first decree the probate court was convinced that it had committed a mistake, so it set aside the decree and entered another. This Court affirmed the last decree not precisely upon the facts found by the probate court but upon facts found by it after a careful review and scrutiny of the evidence, parole and documentary. After such review this Court has found that the provisions of the will had not been established clearly and distinctly by at least two credible witnesses and that conclusion is unassailable because it is solidly based on the established facts and in accordance with law.

The appellant and the dissent try to make much out of a pleading filed by five (5) children and the widow of Apolonio Suntay, another child of the deceased by the first marriage, wherein they state that—

> * * * in answer to the alternative petition filed in these proceedings by Silvino Suntay, through counsel, dated June 18, 1947, to this Honorable Court respectfully state that, since said alternative petition seeks only to put into effect the testamentary disposition and wishes of their late father, they have no opposition thereto. (Pp. 71–72, amended record on appeal.)

Does that mean that they were consenting to the probate of the lost will? Of course not. If the lost will sought to be probated in the alternative petition was really the

will of their late father, they, as good children, naturally had, could have, no objection to its probate. That is all that their answer implies and means. But such lack of objection to the probate of the lost will does not relieve the proponent thereof or the party interested in its probate from establishing its due execution and proving clearly and distinctly the provisions thereof by at least two credible witnesses. It does not mean that they accept the draft Exhibit B as an exact and true copy of the lost will and consent to its probate. Far from it. In the pleading copied in the dissent, which the appellant has owned and used as argument in the motion for reconsideration, there is nothing that may bolster up his contention. Even if all the children were agreeable to the probate of said lost will, still the due execution of the lost will must be established and the provisions thereof proved clearly and distinctly by at least two credible witnesses, as provided for in section 6, Rule 77. The appellant's effort failed to prove what is required by the rule. Even if the children of the deceased by the first marriage, out of generosity, were willing to donate their shares in the estate of their deceased father or parts thereof to their step mother and her only child, the herein appellant, still the donation, if validly made, would not dispense with the proceedings for the probate of the will in accordance with section 6, Rule 77, because the former may convey by way of donation their shares in the estate of their deceased father or parts thereof to the latter only after the decree disallowing the will shall have been rendered and shall have become final. If the lost will is allowed to probate there would be no room for such donation except of their respective shares in the probated will.

The part of the deposition of Go Toh quoted in the motion for reconsideration which appellant underscores does not refer to Go Toh but to Manuel Lopez. Even if Go Toh heard Manuel Lopez read the draft (Exhibit B) for the purpose of checking it up with the original held and read by José B. Suntay, Go Toh could not have understood the provisions of the will because he knew very little of the Spanish language in which the will was written (answer to 22nd and 23rd interrogatories and to X–2 cross-interrogatory). In fact, he testifies in his deposition that all he knows about the contents of the lost will was revealed to him by José B. Suntay at the time it was executed (answers to 25th interrogatory and to X–4 and X–8 cross-interrogatories); that José B. Suntay told him that the contents thereof are the same as those of the draft (Exhibit B) (answers to 33rd interrogatory and to X–8 cross-interrogatory); that Mrs. Suntay had the draft of the will (Exhibit B) translated into Chinese and he read the translation (answer to the 67th interrogatory);

that he did not read the will and did not compare it (check it up) with the draft [Exhibit B] (answers to X–6 and X–20 cross-interrogatories). We repeat that—

> * * * all of Go Toh's testimony by deposition on the provisions of the alleged lost will is hearsay, because he came to know or he learned of them from information given him by José B. Suntay and from reading the translation of the draft (Exhibit B) into Chinese.

This finding cannot be contested and assailed.

The appellant does not understand how the Court came to the conclusion that Ana Suntay, a witness for the appellant, could not have read the part of the will on adjudication. According to her testimony "she did not read the whole will but only the adjudication," which, this Court found, "is inconsistent with her testimony in chief (to the effect) that 'after Apolonio read that portion, then he turned over the document to Manuel, and he went away.'" (P. 528, t. s. n., hearing of 24 February 1948.) And appellant asks the question: "Who went away? Was it Manuel or Apolonio?" In answer to his own question the appellant says: "The more obvious inference is that it was Apolonio and not Manuel who went away." This inference made by the appellant not only is not obvious but it is also illogical, if it be borne in mind that Manuel came to the house of Apolonio and it happened that Ana was there, according to her testimony. So the sentence "he went away" in Ana's testimony must logically and reasonably refer to Manuel, who was a caller or visitor in the house of his brother Apolonio and not to the latter who was in his house. If it was Apolonio who "went away," counsel for the appellant could have brought that out by a single question. As the evidence stands could it be said that the one who went away was Apolonio and not Manuel? The obvious answer is that it was Manuel. That inference is the result of a straight process of reasoning and clear thinking.

There is a veiled insinuation in the dissent that Alberto Barretto testified as he did because he had been paid by Federico C. Suntay the sum of ₱16,000. Federico C. Suntay testifies on the point thus—

> Q. You mentioned in your direct testimony that you paid certain amount to Atty. Alberto Barretto for services rendered, how much did you pay?—A. Around SIXTEEN THOUSAND (₱16,000.00).
>
> Q. When did you make the payment?—A. During the Japanese time.
>
> Q. Did you state that fact in any accounts you presented to the Court?—A. I do not quite remember that.
>
> * * * (P. 180, t. s. n., hearing of 24 October 1947.)
>
> Q. When you made that payment, was (it) your intention to charge it to the estate or to collect it later from the estate?—A. Yes, sir.
>
> Q. More or less when was such payment made, during the Japanese time, what particular month and year, do you remember?—A. I think in 1942.

Q. And you said you paid him because of services he rendered?—A. Upon the order of the Court.

Q. And those services were precisely because he made a will and he made a will which was lost, the will of José Suntay? * * * (P. 181, t. s. n., *supra.*)—A. I think if I remember correctly according to ex-Representative Vera who is the administrator whom I followed at that time, that was paid according to the services rendered by Don Alberto Barretto with regard to our case in the *testamentaría* but he also rendered services to my father.

Q. At least your Counsel said that there was an order of the Court ordering you to pay that, do you have that copy of the order?—A. Yes, sir, I have, but I think that was burned. (P. 184, t. s. n., *supra.*)

So the sum of ₱16,000 was paid upon recommendation of the former administrator and order of the probate court for services rendered by Alberto Barretto not only in the probate proceedings but also for services rendered to his father. But if this sum of ₱16,000 paid to Alberto Barretto upon recommendation of the previous administrator and order of the probate court for professional services rendered in the probate proceedings and to the deceased in his lifetime be taken against his truthfulness and veracity as to affect adversely his testimony, what about the professional services of Anastacio Teodoro who appeared in this case as one of the attorneys for the petitioner-appellant? (P. 2, t. s. n., hearing of 13 October 1947.) Would that not likewise or by the same token affect his credibility? Is not the latter's interest more compelling than the former's?

For the foregoing reasons, the motion for reconsideration is denied.

Pablo, Bengzon, A. Reyes, and, *Concepcion, JJ.*, concur.

PARÁS, *C. J.*, with whom Montemayor and Jugo, *JJ.*, concur, dissenting:

For the same reasons and considerations set forth in detail in my dissent promulgated on July 31, 1954, I vote to grant the motion for reconsideration.

Motion for reconsideration denied.

[No. L-4633. May 31, 1954]

GREGORIO ARANETA, INC., plaintiff and appellant, *vs.* PHILIPPINE NATIONAL BANK, defendant and appellee

1. NEGOTIABLE INSTRUMENT; COMMERCIAL LETTER OF CREDIT; DRAFT; PAYMENT; AGREEMENT DECISIVE AS TO RATE OF EXCHANGE.—Although the plaintiff's application for commercial letter of credit provided for payment at maturity of the draft, this referred merely to the time when the plaintiff was bound to pay. The rate of exchange at which the draft should be paid by the plaintiff, according to its agreement, was determined by the rate of exchange on the date the draft was drawn and presented or negotiated.

2. ID.; ID.; ID.; ID.; ID.; BANKING PRACTICE, IMMATERIAL.—Where there is an express contract between the parties defining their rights and obligations, the banking practice that a draft should be paid at the rate of exchange existing on the date of its maturity is immaterial.

APPEAL from a judgment of the Court of First Instance of Manila. Pecson, *J.*

The facts are stated in the opinion of the court.

Araneta & Araneta for plaintiff and appellant.
First Assistant Corporate Counsel Federico C. Alikpala and *Attorney Augusto Kalaw* for defendant and appellee.

PARÁS, *C. J.:*

This is an appeal by the plaintiff from a judgment of the Court of First Instance of Manila dismissing the plaintiff's complaint with costs.

As admitted by the appellant, the following facts contained in the appealed judgment are uncontroverted: "That on October 28, 1948, the plaintiff filed with the defendant an application for a commercial letter of credit in favor of the Allied National Corporation, Ltd., Anco House, Buckingham Gate, London for the sum of £7,440; that the defendant granted said application and the credit was opened on November 2, 1948 to expire on August 31, 1949 under the terms stated in said application; that on August 30, 1949, a draft in the amount of £4,031.13 was negotiated by the defendant's correspondent bank, Barclays Bank, Ltd., London against the plaintiff's credit; that the defendant paid Barclays Bank, Ltd. the amount of the draft at the official parity rate then existing of $4.0325 for every English pound; that on the face of the draft, it matured on December 25, 1949; that on September 23, 1949, the British pound was devaluated from the rate of $4.0325 to $2.80125; that on the date of the maturity of the draft on December 25, 1949, the rate of exchange of the British pound was $2.80-2/16 and the same rate prevailed on December 27, 1949, the first business day after December 25, 1949; that on December 27, 1949 after the maturity of the draft, the defendant sent the plaintiff a bill of ₱33,727.92 and on the same date the plaintiff forwarded to said defendant a check in the amount of ₱23,194.37 in full payment of its indebtedness (Exhibit E), but it was returned by the defendant without any acknowledgment; that on January 14, 1950, the plaintiff retransmitted said check in the amount of ₱23,194.37 to the defendant for which the latter issued a receipt that it was in 'partial payment' of the account of the plaintiff and there was still a balance of ₱10,533.55; and that on January 26, 1950, the defendant demanded of the plaintiff the remittance of ₱10,533.55."

The defendant, obviously to collect from the plaintiff the amount due as the result of the transaction, debited the latter's overdraft account in the amount of ₱10,659.80, and this step led the plaintiff to institute the present action in which it was prayed that judgment be rendered ordering the defendant to pay to the plaintiff the sum of ₱10,659.80, with legal interest from the date of the filing of the complaint, or ordering the defendant to credit plaintiff's overdraft account in said amounts.

The contract between the parties is embodied in the following application for commercial letter of credit filed with the defendant by the plaintiff-appellant:

"PHILIPPINE NATIONAL BANK
"MANILA, PHILIPPINES

"Official Depository of the Republic
of the Philippines

"Application for Commercial Letter of Credit

"GENTLEMEN:

"Please arrange by air mail for the establishment of an irrevocable Letter of Credit on ———— in favor of ALLIED NATIONAL CORPORATION, LTD., ANCO HOUSE, BUCKINGHAM GATE, LONDON for account of GREGORIO ARANETA, INC., for the sum of POUNDS BRITISH CURRENCY SEVEN THOUSAND FOUR HUNDRED FORTY ONLY (£7,440.00) against drafts drawn at DOCUMENTARY DRAFTS DRAWN AT NINETY (90) DAYS' SIGHT UPON GREGORIO ARANETA, INC., ———— covering shipment of RICE MACHINERY FROM LONDON, ENGLAND TO MANILA, C. I. F. MANILA during THE LIFE OF THIS CREDIT ———— Marine

"War risk insurance to be covered by SHIPPERS Special instructions PARTIAL SHIPMENTS ALLOWED/

"Drafts must be drawn and presented or negotiated, in ———— not later than August 31, 1949.

"IN CONSIDERATION THEREOF, I/We promise and agree to pay you at maturity in Philippine Currency the equivalent of the above amount or such portion thereof as may be drawn or paid upon the faith of said credit, together with your usual charges, and I/We authorize you and your respective correspondents to pay or to accept drafts under this credit, if the aforesaid documents appears to be correct upon their face or unimpeachable in the discretion of yourselves or our correspondents; and agree to reimburse you in the manner aforesaid, even if such documents should in fact prove to be incorrect, defective or forged.

"And I/We release you and your correspondents from all responsibility for General Order charges and other expenses if through negligence of the shipper or other causes beyond their control, the shipping documents fail to reach destination in due time; and such and any other expenses incurred by you or your correspondents concerning the above shipment will be born by me/us.

"I/We hereby recognize and admit your ownership in and qualified right to the possession and disposal of all property shipped under or pursuant to or in connection with this Credit or in any way relative thereto or to the drafts drawn thereunder, whether or not released to us on trust or baillee, receipt and also in and to all shipping documents, warehouse receipts, policies or certificates of the foregoing until such time as all the obligations and liabilities of us or any of us to you at any time existing under or with reference

to this Credit or this agreement, or any other credit or any other obligation or liability to you, have been fully paid and discharged, all as security for such obligations and liabilities and that all or any such property and documents and the proceeds of any thereof, coming into the possession of you or any of your correspondents, may be held and disposed of by you as hereinafter provided and the receipt by you or any of your correspondents, at any time of other security, of whatever nature including cash, shall not be deemed a waiver of any of your rights or powers herein recognized.

"I/We hereby agree to deliver to you upon demand collateral security to your satisfaction should the market value of the merchandise referred to herein suffer any decline, and also give you a lien on all property given to or left in possession of or hereafter given or left in your possession by or for my/our account, and also upon any present or future balance of my/our deposit account with you for the amount of any liability hereunder or otherwise to you.

"I/We hereby convenant and agree to accept all drafts drawn under this credit upon presentation and to pay same on or before maturity irrespective of the fact that the merchandise covered by the corresponding documents may not have arrived in Manila, owing the causes beyond the control of the bank.

"Yours very truly,
"GREGORIO ARANETA, INC.

By: s/s/ VICENTE A. ARANETA
"Vice President

"Date October 30, 1948."

The controversy arises from the fact that while the defendant bank contends that appellant should pay the sum of ₱33,727.92, representing the value of the draft for £4,031.13 negotiated by the defendant's correspondent bank in London against the plaintiff's credit on August 30, 1949, when the official parity rate was $4.0325 for every English pound; the plaintiff contends that it should pay to the defendant only the sum of ₱23,194.37, the equivalent in Philippine Currency of £4,031.13 on December 23, 1949, the date of maturity of the draft, when the rate of exchange was $2.80–3/16.

In the light of the plaintiff's application for a commercial letter of credit which, as granted by the defendant bank, is the contract between the parties, we incline to hold that the defendant's contention is correct. It is significant that the application provides that the draft must be drawn and presented or negotiated not later than August 31,1949; that the plaintiff promised and agreed to pay at maturity in Philippine currency, the equivalent of any amount that might be drawn or paid upon the faith of the plaintiff's credit; and that the plaintiff agreed to reimburse the defendant bank in said manner. From these express stipulations it is clear that the defendant bank was authorized to negotiate on August 30, 1949, a draft in the amount of £4,031.13 and to pay it—as it did pay—at the then rate of exchange. Although the plaintiff's application provides for payment at maturity of the draft, this refers merely to the time when the plaintiff was bound to pay, and not to

the rate of exchange at which the draft should be paid by the plaintiff, since the latter's obligation is determined by the rate of exchange on the date the draft was drawn and presented or negotiated, which was not to be later than August 31, 1949. The application thus specifically provides that what is to be paid at maturity in Philippine Currency is the equivalent of "the amount or such portion thereof as may be drawn or paid upon the faith" of the plaintiff's credit; and it is admitted in this case that the defendant bank actually paid for the draft in question the amount of ₱33,727.92. The correctness of the appealed decision is, moreover, established by the agreement of the plaintiff to "reimburse" the defendant bank—a term that requires the return of something paid.

Plaintiff-appellant invokes an alleged banking custom or practice whereby a draft should be paid at the rate existing on the date of its maturity. Even assuming the existence of this banking practice, the same is clearly immaterial, as there is an express contract between the parties defining their rights and obligations. By the same token, we need not state whether an exchange contract, which fixes the rate of exchange at which the applicant is to pay the bank, would have been helpful or more advantageous to either of the parties.

Wherefore, the appealed judgment is affirmed with costs against the appellant. So ordered.

Pablo, Montemayor, Jugo, Bautista Angelo, and *Labrador, JJ.,* concur.

BENGZON, *J.,* dissenting:

I think the plaintiff's position is legally sound.

In the very words of the letter of credit, Araneta Inc., agreed to pay the National Bank "at maturity, in Philippine currency the equivalent of the above amount" (£7440.00) "or such portion thereof as may be drawn or paid" (£4031.13) upon the faith of said credit.

The majority decision admits that the date of "maturity" was Dec. 25, 1949, and the amount drawn upon the letter of credit £4031.13. Hence, the Araneta corporation was duty bound to pay on Dec. 25, 1949, the equivalent in Philippine currency of £4031.13, because that was the "portion drawn" against the commercial letter of credit. It is undeniable that on Dec. 25, 1949 up to December 27, 1949 "the equivalent in Philippine currency of £4031.13" was ₱23,194.37 (at the rate then prevailing of $2.80 per British pound). Wherefore, the Araneta corporation had to satisfy ₱23,194.37 *only.*

The fact that the Philippine National Bank had advanced, in August 30, 1949, ₱33,737.92 for a draft of £4031.13 chargeable to Araneta Inc., does not alter the juridical situation. Araneta Inc., did not receive credit of

₱33,727.92 from the Bank. It got £4031.13; and *"that is the same amount"* it offered to pay on Dec. 25, 1949 (in Philippine currency of course). Proof that Araneta Inc., received pounds sterling, *and not pesos,* is its promise to pay *"the equivalent* in Philippine currency". To repeat Araneta Inc., became liable for £4031.13; and it offered to deliver the same amount on the date of maturity.

It is plain to see, that if on June 5, 1949, I borrow one hundred pounds sterling from Juan de la Cruz with the promise to repay the same amount one year afterwards, my obligation is to give him one hundred pounds sterling on June 5, 1950. If on that day a pound costs 10 pesos, I am bound to deliver one hundred pounds, even if Juan had paid in June 1949 eight pesos only per pound. (See Art. 312 Code of Commerce.)

In this kind of contract, fluctuation of the rate of exchange is contemplated by the parties; and they assume the risks connected therewith. If the rate goes up, the creditor benefits from the transaction; if down, he loses. But I understand that, in actual practice, banks do not lose thru rate fluctuations, because they adopt or have means to protect themselves. For instance, if after "lending" £4031.13 to the Araneta, the Bank had "borrowed" the same amount from another institution, payable also on Dec. 25, 1949, what it receives from Araneta Inc. on that date will also be sufficient to discharge its debt. Result: What it "loses" in the Araneta deal, it "gains" in the other transaction.

My point of view accords with the banking customs invoked by plaintiff—which the majority decision admits, but refuses to apply on the excuse that there is an express written contract. But that written contract *did not explicitly stipulate* the rate of exchange to be used in computation: whether the rate of August 30, 1949 or the rate of Dec. 25, 1949. In the absence of stipulation, the usages of commerce prevail, because the parties to the commercial letter of credit must be presumed to have contracted in the light of such practice, which in this case follows the dictates of law and equity. Note especially that commercial contracts (letter of credit is one) are also governed by customs usually observed in the place (Art. 2 Code of Commerce.)

My note is to reverse the decision.

REYES, *J.:*

I concur in this dissent.

CONCEPCION, *J.:*

I concur.

Judgment affirmed.

[No. L-5897. 23 April 1954]

KING MAU WU, plaintiff and appellee, *vs.* FRANCISCO SYCIP, defendant and appellant

INTERNATIONAL LAW; CONFLICT OF LAWS; CONTRACTS EXECUTED IN FOREIGN COUNTRY, COGNIZABLE BY LOCAL COURTS; NO CONFLICT OF LAWS WHERE QUESTION INVOLVED IS TO ENFORCE OBLIGATION ARISING FROM CONTRACT.—Although the contract of agency was executed in New York, the Court of First Instance of Manila has jurisdiction to try a personal action for the collection of a sum of money arising from such contract, because a non-resident may sue a resident in the courts of this country where the defendant may be summoned and his property leviable upon execution in case of a favorable, final and executory judgment. There is no conflict of laws involved in the case because it is only a question of enforcing an obligation created by or arising from contract; and unless the enforcement of the contract be against public policy of the forum it must be enforced.

APPEAL from a judgment of the Court of First Instance of Manila. Panlilio, *J.*

The facts are stated in the opinion of the court.

I. C. Monsod for defendant and appellant.

J. A. Wolfson and *P. P. Gallardo* for plaintiff and appllee.

PADILLA, *J.:*

This is an action to collect ₱59,082.92, together with lawful interests from 14 October 1947, the date of the written demand for payment, and costs. The claim arises out of a shipment of 1,000 tons of coconut oil emulsion sold by the plaintiff, as agent of the defendant, to Jas. Maxwell Fassett, who in turn assigned it to Fortrade Corporation. Under an agency agreement set forth in a letter dated 7 November 1946 in New York addressed to the defendant and accepted by the latter on the 22nd day of the same month, the plaintiff was made the exclusive agent of the defendant in the sale of Philippine coconut oil and its derivatives outside the Philippines and was to be paid 2½% on the total actual sale price of sales obtained through his efforts and in addition thereto 50% of the difference between the authorized sale price and the actual sale price.

After trial where the depositions of the plaintiff and of Jas. Maxwell Fassett and several letters in connection therewith were introduced and the testimony of the defendant was heard, the Court rendered judgment as prayed for in the complaint. A motion for reconsideration was denied. A motion for new trial was filed, supported by the defendant's affidavit, based on newly discovered evidence which consists of a duplicate original of a letter dated 16 October 1946 covering the sale of 1,000 tons of coconut oil soap emulsion signed by Jas. Maxwell Fassett to the defendant; the letter of credit No. 20122 of the Chemical

Bank & Trust Company in favor of Jas. Maxwell Fassett assigned by the latter to the defendant; and a letter dated 16 December 1946 by the Fortrade Corporation to Jas. Maxwell Fassett whereby the corporation placed a firm order of 1,000 metric tons of coconut oil soap emulsion and Jas. Maxwell Fassett accepted it on 24 December 1946, all of which documents, according to the defendant, could not be produced at the trial, despite the use of reasonable diligence, and if produced they would alter the result of the controversy. The motion for new trial was denied. The defendant is appealing from said judgment.

Both parties are agreed that the only transaction or sale made by the plaintiff, as agent of the defendant, was that of 1,000 metric tons of coconut oil emulsion f.o.b. in Manila, Philippines, to Jas. Maxwell Fassett, in whose favor letter of credit No. 20122 of the Chemical Bank & Trust Company for a sum not to exceed $400,000 was established and who assigned to Fortrade Corporation his right to the 1,000 metric tons of coconut oil emulsion and to the defendant the letter of credit referred to for a sum not to exceed $400,000.

The plaintiff claims that for that sale he is entitled under the agency contract dated 7 November 1946 and accepted by the defendant on 22 November of the same year to a commission of 2½% on the total actual sale price of 1,000 tons of coconut oil emulsion, part of which has already been paid by the defendant, there being only a balance of $3,794.94 for commission due and unpaid on the last shipment of 379.494 tons and 50% of the difference between the authorized sale price of $350 per ton and the actual selling price of $400 per ton, which amounts to $25,000 due and unpaid, and $746.52 for interest from 14 October 1947, the date of the written demand.

The defendant, on the other hand, contends that the transaction for the sale of 1,000 metric tons of coconut oil emulsion was not covered by the agency contract of 22 November 1946 because it was agreed upon on 16 October 1946; that it was an independent and separate transaction for which the plaintiff has been duly compensated. The contention is not borne out by the evidence. The plaintiff and his witness depose that there were several drafts of documents or letters prepared by Jas. Maxwell Fassett preparatory or leading to the execution of the agency agreement of 7 November 1946, which was accepted by the defendant on 22 November 1946, and that the letter, on which the defendant bases his contention that the transaction on the 1,000 metric tons of coconut oil emulsion was not covered by the agency agreement, was one of those letters. That is believable. The letter upon which defendant relies for his defense does not stipulate on the commission to be

paid to the plaintiff as agent, and yet if he paid the plaintiff a 2 ½% commission on the first three coconut oil emulsion shipments, there is no reason why he should not pay him the same commission on the last shipment amounting to $3,794.94. There can be no doubt that the sale of 1,000 metric tons of coconut oil emulsion was not a separate and independent contract from that of the agency agreement of 7 November and accepted on 22 November 1946 by the defendant, because in a letter dated 2 January 1947 addressed to the plaintiff, referring to the transaction of 1,000 metric tons of coconut oil emulsion, the defendant says—

* * * I am doing everything possible to fulfill these 1,000 tons of emulsion, and until such time that we completed this order I do not feel it very sensible on my part to accept more orders. I want to prove to Fortrade, yourself and other people that we deliver our goods. Regarding your commission, it is understood to be 2½% of all prices quoted by me plus 50–50 on over price. (Schedule B.)

In another letter dated 16 January 1947 to the plaintiff, speaking of the same transaction, the defendant says—

As per our understanding when I was in the States the overprice is subject to any increase in the cost of production. I am not trying to make things difficult for you and I shall give you your 2½% commission plus our overprice provided you can give me substantial order in order for me to amortize my loss on this first deal. Unless such could be arranged I shall remit to you for the present your commission upon collection from the bank. (Schedule C.)

In a telegram sent by the defendant to the plaintiff the former says—

* * * YOUR MONEY PENDING STOP UNDERSTAND YOU AUTHORIZED SOME LOCAL ATTORNEYS AND MY RELATIVES TO INTERVENE YOUR BEHALF. (Schedule D.)

The defendant's claim that the agreement for the sale of 1,000 metric tons of coconut oil emulsion was agreed upon in a document, referring to the letter of 16 October 1946, is again disproved by his letter dated 2 December 1946 to Fortrade Corporation where he says:

The purpose of this letter is to confirm in final form the *oral agreement* which we have heretofore reached, as between ourselves, during the course of various conversations between us and our respective representatives upon the subject matter of this letter.

It is understood that I am to sell to you, and you are to purchase from me, 1,000 tons of coconut oil soap emulsion at a price of $400 per metric ton, i.e., 2,204.6 pounds, F.O.B. shipboard, Manila, P. I. (Exhibit S, Special. Italics supplied.)

The contention that as the contract was executed in New York, the Court of First Instance of Manila has no jurisdiction over this case, is without merit, because a non-resident may sue a resident in the courts of this

country [1] where the defendant may be summoned and his property leviable upon execution in case of a favorable, final and executory judgment. It is a personal action for the collection of a sum of money which the courts of first instance have jurisdiction to try and decide. There is no conflict of laws involved in the case, because it is only a question of enforcing an obligation created by or arising from contract; and unless the enforcement of the contract be against public policy of the forum it must be enforced.

The plaintiff is entitled to collect ₱7,589.88 for commission and ₱50,000 for one-half of the overprice, or a total of ₱57,589.88, lawful interests thereon from the date of the filing of the complaint, and costs in both instances.

As thus modified the judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Judgment affirmed with modification.

[1] Marshall-Wells Co. *vs.* Henry W. Elser & Co., 46 Phil., 70; Western Equipment and Supply Co. *vs.* Reyes, 51 Phil., 115.

ERRATA

1. In Case No. L–5694, PAMBUJAN SUR UNITED MINE WORKERS *vs.* SAMAR MINING COMPANY, INC., published in the *Official Gazette,* Vol. 50, No. 6, p. 2449, the second paragraph on page 2452 should read as follows:

> That the controversy concerns more than 30 employees is clear. The Union has 350 member-employees and all are suing to enforce the Collective Bargaining Contract. It is inaccurate to state that "the present action does not involve employees/laborers of the defendant company who are members of the plaintiff union, but its remaining unemployed members who should have been employed if not for the violation of the bargaining contract by the defendant." The action is by the Union; therefore all its members—whether actual employees or would-be employees—are affected.[2] The members of the Union, who are actual employees have a vital interest in the fulfillment of the obligations resulting from the bargaining contract, specially the clause allegedly broken by defendant. Otherwise it would not have been inserted in the said contract.

2. In Case No. L–6303, TEODORO VAÑO *vs.* PAZ VAÑO VDA. DE GARCES, ET AL., published in the *Official Gazette,* Vol. 50, No. 7, p. 3044, counsel for petitioner-appellant are:

> *Pedro Re. Luspo* and *Vicente L. Faelnar* and *Roque R. Luspo.*

3. In Case No. L–4989, MARCIANO INOCENTE ET AL. *vs.* MAMERTO S. RIBO ET AL., published in the *Official Gazette.* Vol. 50, No. 10, page 4853, the trial judge is *Judge Solidum* and not Judge Diez, as published.

4. In Case No. L–5629, LILI SISON JARANILLA ET AL. *vs.* CONSOLACIÓN GONZALES ET AL., published in the *Official Gazette,* Vol. 50, No. 10, page 4760, line 17, a semi-colon was erroneously omitted after the word "Jaranilla". Line 17 should read thus:

> ranilla; that on 17 July 1946 attorneys Perez, Gayagoy,

DECISIONS OF THE COURT OF APPEALS

[No. 1611–R. April 8, 1954]

SISENANDO MADLAMBAYAN Y OTROS, demandantes y apelantes, *contra* JOSÉ GUTIERREZ DAVID Y OTROS, demandados y apelantes.

1. TESTAMENTARIA; VENTA POR EL ADMINISTRADOR O ALBACEA DE BIENES PERTENECIENTES A UNA TESTAMENTARIA; REQUISITOS; ARTÍCULO 714, CÓDIGO DE PROCEDIMIENTO CIVIL, TAL COMO FUE ENMENDADO POR LA LEY NO. 2884.—Siendo indiscutible que la albacea no cumplio lo dispuesto por la ley de que se debe, acompañar el consentimiento por escrito de los herederos a la petición del albacea o administrador para vender bienes pertenecientes a una testamentaria, por consiguiente, la alegada venta con pacto de retro del terreno en cuestión es nula y de ningún valor *ab initio*. (Jamora y Director de Educación *contra* Jaranilla, 47 Jur. Fil., 651; Ortales y otros *contra* el Registrador de Títulos de Negros Occidental y otros, 55 Jur. Fil., 35).
2. APELACIÓN; ERROR NO SEÑALADO POR EL APELANTE ES CORREGIBLE POR EL TRIBUNAL DE APELACIÓNES; ARTÍCULO 5, REGLA 53, DE LOS REGLAMENTOS.—Un error del Juzgado *a quo* que no aparece como uno de los errores señalados por los apelantes, es corregible cuando es muy aparente. (Artículo 5, Regla 53 de los Reglamentos; Dilag *vs.* Heirs of Resurrección, 75 Phil., 651).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Pampanga. Bayona, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Eduardo D. Gutierrez en representación de los demandados-apelantes.

Jose P. Fausto en representación de los demandantes-apelantes.

OCAMPO, *M.:*

Trátase de la apelación interpuesta por los demandantes y por el demandado José Guiterrez David contra le decisión del Juzgado de Primera Instancia de Pampanga, cuya parte dispositiva se lee:

"POR TODO LO EXPUESTO, el Juzgado declara que la alegada venta con pacto de retro, Exhíbito D, no es talmente venta con pacto de retro, ni ha transmitido ningún derecho de propiedad a los aqui demandantes, sino una mera hipoteca, y que el canon anual de ₱480 es el interés de 12 por ciento el año del prestamo de ₱4,000. Se declara al demandado José Gutierrez David dueño absoluto del terreno descrito en la demanda, con derecho a la posesión del mismo, sujeto, sin embargo, a la mencionada hipoteca de ₱4,000 á favor de los aqui demandantes, al (12½) por ciento de interés anual pagadero por años vencidos. Se condena a Maria Socorro Magat en su concepto de administradora judicial de la testamentaria de Maxima Catacutan a pagar a los demandantes los intereses anuales de la hipoteca de ₱4,000 desde la fecha de su otorgamiento, o sea desde el 21 de julio de

1926 hasta el mes de febrero de 1936, a razón de ₱480 al año, con los intereses legales correspondientes hasta su completo pago. En el caso de que la testamentaria de Maxima Catacutan ya esta definitivamente terminada y cerrada, entonces los demandados Maria Socorro Magat y Alberto Magat que heredaron el terreno en cuestión, son los que deberan pagar mancomunada y solidariamente los intereses arriba mencionados a los aquí demandantes.

"Se condena asimismo el demandado José Gutierrez David a pagar a los demandantes el préstamo hipotecario de ₱4,000 tan pronto como quede firme esta decisión, juntamente con los intereses de 12 por ciento al año desde la fecha de su adquisición, o sea, desde el mes de febrero de 1936 hasta el completo pago del gravamen de ₱4,000 y los intereses correspondientes.

"Se absuelve de la demanda al demandado Andres Eusebio, por las razones ya expuestas.

"Se desestima la reclamación de los demandantes en cuanto a daños y perjuicios alegados en la demanda, por falta de pruebas.

"No se hace pronunciamiento en cuanto a las costas."

En esta apelación las demandantes-apelantes alegan que el Juzgado *a quo* erró:

"1. Al no decidir este asunto de acuerdo con los "issues" planteados por las partes en sus respectivos escritos de alegaciones;

"2. Al no formular las conclusiones de su decisión a base de una teoria forzada y abiertamente contraria a los hechos admitidos por los demandados en su defensa especial;

3. Al reputar como simple hipoteca, con un interés de 12 por ciento al año, la venta con pacto de retro que consta en la escritura Exhíbito D—demandantes (p. 4 del legajo de exhíbitos), y al invocar, como base de esta su conclusión, que (1) el tutor que fue de los aqui demandantes, al pedir autorización para la inversión de los ₱4,000 de la tutela que él tenía en manos él alegó, como fundamento, su propósito de dar esta suma en préstamo, con un interés de 12 por ciento al año, y la orden dictada luego accediendo a dicha petición; (2) la omisión del mismo tutor de incluir en su inventaro el inmueble en cuestión, como parte de las propiedades de sus pupilos; (3) la consignación por el mismo tutor en la cuenta por él presentada, como intereses por cobrar de la testamentaria de Maxima Catacutan, en vez de emplear el término "canon", de la cantidad de ₱960; (4) la no adjudicación a los demandantes, una vez terminada su tutela, del mismo inmueble; y (5) la desproporción que resulta del precio o importe de la venta con pacto de retro en relación con el valor amillarado que es aparentemente mayor, de la propiedad asi vendida;

"4. Al no declarar a los demandantes dueños absolutos y exclusivos del terreno en cuestión;

"5. Al no autorizar la enmienda pedida por los demandantes en su petición de fecha 20 de abril de 1943 (Exp. de Apelación conjunto, pp. 44–46), para ajustar sus escritos de alegaciones a las pruebas practicadas, de conformidad con lo dispuesto en el artículo 4.º de la Regla 17 de los Reglamentos vigentes de los Tribunales de Justicia;

"6. Al no condenar a los demandados, mancomunada y solidariamente, al pago á los demandantes del canon devengado del terreno en cuestión con sus intereses legales, a partir desde el 21 de julio de 1926, hasta su completo pago, a razón de ₱480 al año;

"7. Al no condenar a los demandados, mancomunada y solidariamente, al pago a los demandantes, en concepto de daños y perjuicios, de la cantidad de ₱500, por lo menos.

"8. Al no condenar igualmente a los demandados al pago de las costas."

Por otro lado, el demandado-apelante señala como errores de que adolece la decisión apelada, especificados del siguiente modo:

"I

The lower court erred in not holding that the deed of conveyance, Exhibit D, executed in favor of the guardianship of the minors Madlambayan is null and void *ab initio*.

"II

The trial court erred in holding that Exhibit D created a mortgage lien enforceable against herein appellant.

"III

The lower court erred in holding that appellant Gutierrez David knew of the existence of the deed Exhibit D in favor of plaintiffs Madlambayan.

"IV

The trial court erred in sentencing appellant Gutierrez David to pay plaintiffs ₱4,000 with interests at 12 per cent per annum from February, 1936.

"V

The lower court erred in not dismissing the complaint as to the appellant Gutierrez David."

Reducida a su minima expresión, somos de opinión que la cuestión principal á resolver en esta apelación es la de si los demandantes-apelantes tienen derecho á que se les declare dueños de la mitad norte de la parcela de terreno que se describe en el parrafo 2 de la demanda re-enmendada de autos.

En 21 de julio de 1926, Maria Socorro Magat, albacea de la testamentaria de la finada Maxima Catacutan (Actuacion Especial No. 3309 del Juzgado de Primera Instancia de Pampanga) pidió que dicho juzgado le autorizara á vendor con pacto de retro la mitad norte de la citada parcela de terreno (Exhibit B), petición esta que fue concedida en dicha fecha (Exhibit C), por lo que ella vendió con pacto de retro esta porción de terreno a la Tutela de los demandantes, entonces menores de edad, por ₱4,000, habiéndose otorgado al efecto el documento correspondiente en el mismo dia 21 de julio, 1926 (vease Exhíbito M). En este documento consta que la testamentaria de la finada Maxima Catacutan podrá recomprar el terreno objeto del contrato dentro del plazo de 8 años á partir desde la fecha de su otorgamiento y que ella continuará en la posesión del mismo terreno en concepto de arrendataria con obligación de pagar el canon de ₱480 anuales a dicha Tutela. El referido Juzgado de Primera Instancia aprobó en su auto de fecha 21 de julio, 1926 (Exhíbito F) la llamada venta con pacto de retro de tereno.

En noviembre 14, 1928, la misma Albacea pidió permiso del juzgado para vender la totalidad de la citada parcela de terreno, y, habiendo conseguido la autorización, ven-

dió á Simeon Roque, en venta absoluta, dicha parcela de terreno, incluyendo la porción ya vendida á la Tutela de los demandantes, y otorgó al efecto la escritura correspondiente (Exhíbito M) en la que se mencion ó la alegada venta con pacto de retro de terreno hecha á favor de la Tutela de los demandantes-apelantes, en estos terminos:

"Que la citada parcela de terreno no esta registrada bajo la Ley 496 ni bajo la Ley Hipotecaria española, y se halla actualmente vendida con pacto de retro a favor de la Tutela de los menores Sisenando Madlambayan y hermanos, y por el precio de ₱4,000, y por el termino de 8 años, de conformidad con la escritura otorgada y aprobada debidamente por el Juzgado en la Testamentaria arriba mencionada. El canon correspondiente a los ultimos años, que importe la suma de ₱1,440, a razon de ₱480 anuales, segun consta estipulado, hasta ahora no ha sido pagado;"

En 5 de diciembre de dicho año se registró esta escritura de venta (Exhíbito M) en la oficina del Registrador de Titulos de Pampanga.

Después de algún tiempo, Maria Socorro Magat y su hermano, Alberto Magat, unicos herederos de la finada Maxima Catacutan, repartieron entre ellos la parcela de terreno mencionada, habiendo correspondido á Alberto Magat la mitad Norte de la misma, ó sea, la porción vendida á la Tutela de los demandantes (Exhíbito V, demandantes Exhíbito 7, Gutierrez). Luego, ó sea, despues de esta repartición de terreno, Alberto Magat inició una acción de nulidad de la aludida venta de terreno hecha por la Albacea Maria Socorro Magat á favor de Simeon Roque, y el Juzgado declaró nula dicha venta (Exhíbito 17–Gutierrez). Pero Alberto Magat no ejercitó ninguna acción con respecto al contrato celebrado por la referida Albacea Maria Socorro Magat con la Tutela de los demandantes sobre la mitad Norte de dicha parcela de terreno.

En el día 1 de febrero de 1936, Maria Socorro Magat vendió una mitad *pro-indiviso* de la citada parcela de terreno á Andres Eusebio por la suma de ₱5,779.15; y la otra mitad *pro-indiviso* la vendió Alberto Magat al mismo Andres Eusebio por al precio de ₱8,000 (vease dos escrituras, Exhíbitos S y T). Estas escrituras se ratificaron ante la fé de un notario público que trabajaba entonces en el bufete del demandado-apelante, Jose G. David. Adquirida ésta parcela de terreno por Andres Eusebio, éste á su vez, la vendió por ₱16,000 al demandado-apelante, Jose Gutierrez David y á su esposa Concepcion Roque, habiendose otorgado al efecto un documento que se ratificó ante un notario público a los tres años de su otorgamiento (Exhíbitos U–1 and U–2).

Contienden los demandantes-apelantes que ellos son los dueños de la mitad Norte de la parcela de terreno tantas veces mencionada, que habian comprado con pacto de retro de la Albacea de la testamentaria de la finada Maxima Catacutan, por la razon de que los herederos de dicha finada

no han recomprado dicho terreno dentro del plazo de 8 años convenido para su redención. Contienden tambien que habiendo transcurrido el periodo de tiempo de más de 14 años, a partir desde el 21 de julio, 1926, en que se celebró el contrato de venta con pacto de retro mencionado en el documento, Exhíbito M, sin que ninguno de los herederos de la finada Maxima Catacutan haya discutido ó impugnado la validez de dicho contrato dentro de este periodo de tiempo; y habiendo poseido los demandantes-apelantes el terreno objeto del contrato de venta con pacto de retro por más del 14 años en concepto de dueños, sus derechos sobre el mismo terreno, por prescripción adquisitive, están ahora fuera de discusión.

Por otro lado, el demandado-apelante, Jose Gutierrez David arguye que aquel contrato de vente con pacto de retro celebrado por Maria Socorro Magat, Albacea de la testamentaria de la difunta Maxima Catacutan con la Tutela de los demandantes-apelantes, es nulo y sin valor *ab initio*, dado el hecho de que se hizo sin consentimiento por escrito de los herederos de dicha difunta Maxima Catacutan.

En la decisión apelada el Juzgado *a quo* por razones que se ignoran, dejó de resolver la proposición aducida por el demandado Jose Gutierrez David de que el alegado contrato de venta con pacto de retro es nulo *ab initio;* pero declaró que este contrato es "un mero préstamo con garantia de hipoteca".

Opinamos que para hallar la solución del caso que nos ocupa se debe determinar antes si es ó no nulo *ab initio* el contrato celebrado en 21 de julio de 1926 por Albacea de la Testamentaria de la finada Maxima Catacutan con el Tutor de los demandantes sobre el terreno en cuestión, sea este contrato uno de venta con pacto de retro ó uno de préstamo.

El artículo 714 del Código de Procedimiento Civil, tal como fué enmendado por la Ley No. 2884, que tiene aplicación en esta causa, dispone:

'Cuando los bienes muebles del difunto no bastaren a satisfacer las deudas y gastos de la testamentaría sin perjudicar los intereses de los participantes en la herencia, y cuando el testador no hubiere dejado disposiciones para efectuar dichos pagos y gastos, el juzgado, a solicitud del albacea o administrador, acompañada del consentimiento, por escrito, de los herederos, legatarios y demás interesados residentes en las Islas Filipinas, puede concederle permiso para vender, hipotecar ó de cualquier otro modo graver con el fin indicado bienes raíces en vez de bienes muebles, cuando quede suficientemente demostrado que dicha venta, hipoteca o gravamen redundaria en beneficio de los interesados y no perjudicaria ningún legado de terrenos. En caso de perjuicio se requiere el consentimiento del legatario."

Hemos examinado los autos tenemos ante Nos, y encontramos que la solictud (Exhíbito B) en la que Maria Socorro, Magat, albacea de la testamentaria de la finada Maxima Catacutan, pidió que ella fuera autorizada por el

juzgado a vender con pacto de retro parte de los bienes de dicha testamentaria, no estaba acompañada de consentimiento por escrito de los herederos de dicha finada. Si esto es el caso, es indiscutible que la referida Albacea no cumplió lo dispuesto por la ley de que se debe acompañar el consentimitineto por escrito de los herederos á la petición del Albacea ó administrador para vender bienes pertenecientes á una testamentaria y por consiguiente, la alegada venta con pacto de retro de terreno en cuestión es nula y de ningun valor *ab initio*. En la causa Ortalez y otros *contra* el Registrador de Títulos de Negros Occidental y otros (55 Jur. Fil., 35) nuestro Tribunal Supremo, interpretando el artículo 714 del Código de Procedimiento Civil, ha sentado esta doctrina:

"Son tan indispensables para la protección de los herederos los requisitos que exige el artículo 714 del Código de Procedimiento Civil en la venta ó hipoteca de bienes raíces de una sucesión, que sin su concurrencia el juez no tiene facultad para conceder la autorización que para ello es solicite por el administrador. La ley dispone cómo se debe hacer esta clase de venta ó hipoteca y debe cumplirse estrictamente lo dispuesto por la ley. La validez de la hipoteca o la venta depende de ese cumplimiento. (Lizárraga Hermanos *contra* Abada, 40 Jur. Fil., 130; Buenaventura y del Rosario *contra* Ramos, 43 Jur. Fil., 737.)

Y en la causa Jamora y Director de Educación *contra* Jaranilla (47 Jur. Fil., 651) el mismo Tribunal Supremo dijo:

"Con arreglo a los artículos 714 y 718 del Código de Procedimiento Civil, es un requisito indispensable, para que el administrador pueda vender o permutar, mediante autorización del juzgado, bienes raices de la herencia, el consentimiento de los herederos, legatarios y demás personas interesadas en la misma. Si se realiza la venta o permuta sin dicho requisito, será nula y de ningún valor, aunque resulte beneficiosa para todos los interesados."

En cuanto a la contención de los demandantes-apelantes de que ellos tienen la posesión de la porción de terreno en litigio, desde el 21 de julio de 1926, en que se otorgó la escritura de venta con pacto de retro, y que durante 14 años, 3 meses y 11 días, á partir desde dicha fecha, nadie discutió la validez de esta venta con pacto de retro de terreno, por prescripción adquisitiva, sus derechos sobre el terreno están ahora fuera de discusión, la encontramos insostenible, porque si el alegado contrato de venta con *pacto de retro* celebrado por Maria Socorro Magat en su capacidad de Albacea de la testamentaria de la finada Maxima Catacutan con la Tutela de los demandantes, entonces eran menores de edad, es nulo *ab initio*, dicho contrato, en nuestra opinión, no ha creado ningun derecho á dichos demandantes-apelantes; y teniendo en cuenta que nunca tuvieron posesión material del mismo terreno, los susodichos demandantes-apelantes no pueden adquirir este terreno por prescripción adquisitiva. La doctrina sentada en la causa Bautista y Lichauco *vs.* Berenguer (39 Phil., 443) citada por los demandantes-ape-

lantes en apoyo de su pretensión no es aplicable al caso que nos ocupa, por la razón de que en dicha causa el contrato de venta con pacto de retro no era nulo *ab initio*.

Habiendo llegado á esta conclusión, declaramos que los demandantes-apelantes no tienen derecho á reclamar como do su propiedad el terreno en litigio. Sin embargo, creemos que ellos tienen derecho á que se les pague la suma de ₱4,000 que habían entregado á la albacea Maria Socorro Magat, el 21 de julio de 1926, como precio del contrato celebrado por dicha Albacea con la Tutela de los demandantes-apelantes sobre dicho terreno. ¿Quien pagará esta cantidad de ₱4,000 á los demandantes-apelantes?

Está fuera de discusión que Maria Socorro Magat y Alberto Magat son los unicos herederos de la finada Maxima Catacutan. Como heredera, Maria Socorro Magat, el 21 de julio, 1926, podia enagenar su derecho de herencia sobre la parcela de terreno arriba mencionada, ora vendiendolo ora hipotecandolo pero no tenía derecho de enagenar ninguna porción de dicha parcela de terreno por ser una propiedad pro-indiviso de ella y de su hermano, Alberto Magat. Por consiguiente, si bien el llamado contrato de venta con pacto de retro de terreno celebrado por la Albacea Maria Socorro Magat es nulo *ab initio* por no haber ella cumplido lo dispuesto por la ley, creemos, sin embargo, que en el terreno de la equidad se puede considerar dicho contrato como una transacción hecha por Maria Socorro Magat en su capacidad de heredera sobre su derecho de herencia sobre el terreno en litigio.

Ahora, la cuestión á determinar es esta; ¿cual era la naturaleza del contrato que Maria Socorro Magat celebró con la tutela de los demandantes-apelantes, era una venta con pacto de retro de su derecho hereditario sobre el terreno en litigio o un mero préstamo con hipoteca de su mencionado derecho? Basandones en los términos en que se hallan redactados los documentos, Exhibitos G y R, que tienen relación con el contrato celebrado por Maria Socorro Magat con la tutela de los demandantes, nos inclinamos a creer, como asi creemos, que la intención de Maria Socorro Magat era obtener simplemente un préstamo con hipoteca de terreno. Considerando, sin embargo, que al tiempo de entrar Maria Socorro Magat en aquella transacción ella tenía solamente un derecho indefinido sobre el terreno en su capacidad de heredera, pero no tenía derecho sobre una porción determinada de dicho terreno, la transacción que ella tuvo con la tutela de los demandantes-apelantes se puede estimar como un mero préstamo de ₱4,000 con hipoteca equitativa de su derecho como heredera sobre el terreno en litigio.Y, teniendo en cuenta que su entonces derecho indefinido sobre el terreno está ya determinado y especificado en virtud de la repartición habida entre ella y su co-heredero del terreno en litigio, tal como se justifica por el Exhibito V–deman-

dantes ó Exhíbito 7–Gutierrez, la hipoteca equitativa que garantiza el pago del préstamo se puede ahora considerar como constituida sobre la mitad Sur del mismo terreno por ser la porción adjudicada á ella en la repartición.

La siguiente cuestión que hay que determinar en esta apelación es la de si el demandado-apelante está obligado a respetar el gravamen sobre el terreno en litigio.

En el alegato de los demandantes-apelantes (pp. 12–13) se expone:

"Anulada la venta otorgada a favor de Simeon Roque en cuanto a la mitad que, en la repartición, habia tocado a Alberto, los herederos de aquél, que hasta entonces no habian soltado mas que cuatro míl pesillos del importe de dicha venta, pudiendo quedarse con la otra mitad del terreno, prefirieron, sin embargo, reseindir la venta en su totalidad (Exhibito R–demandantes, p. 31). El mismo mes en que tuvo lugar esta rescisión, el demandado Andres Eusebio sale en escena como comprador. (Exhíbitos "S" demandantes y "T"–demandantes, pp. 39 y 45). Y el mismo mes el demandado José Gutierrez David adquiere de Eusebio el mismo terreno, por medio de un documento privado, que no se legalizó sino tres años después. (Exhibitos U–1 y U–2, pp. 55–57).

"Según admisión hecha en corte abierta por el demandado Jose Gutierrez David, el Notario que legalizó la escritura de rescisión y las ventas otorgadas por Maria Socorro Magat y Alberto Magat a favor de Andres Eusebio trabajaba entonces en su Bufeta, en donde los mencionados documentos fueron preparados. Y que dicho Andres Eusebio era su cliente. (N. T. p.——).

"Estos son, en sintesis, los hechos que resultan de las pruebas presentadas, casi todas documentales."

De los argumentos del demandado-apelante que constan en su alegato (pp. 14–16) se vé que él no discute los hechos expuestos por los demandantes-apelantes acotados arriba. lo que él discuto solamente es la conclusión del tribunal sentenciador deducida de dichos hechos, que se lee:

"... La administradora judicial, al vender el terreno a Simeon Roque, hizo constar en el documento al mismo gravamen. Y como quiera que se rescindió esa venta a favor de Simeon Roque, y en el acto el terreno fué vendido al demandado Eusebio, este sabía o debía saber que el terreno comprado por él estaba gravado á favor de los demandantes, y considerando que las escrituras de traspaso á favor de Andres Eusebio se hicieron entonces en el bufete del demandado José Gutierrez David, quien adquirió en compra de Andres Eusebio el mismo terreno casi en la misma fecha en que Eusebio compraba el citado terreno, no puede negarse que el demandado José Gutierrez David sabía que el terreno que compró estaba sujeto al gravamen de ₱4,000 a favor de los demandantes."

Después de haber considerado los puntos de vista de una y otra parte sobre este particular, encontramos que, bajo las circunstancias del caso, existe motivo razonable para concurrir, como asi concurrimos, con esta conclusión de dicho tribunal.

Creemos, sin embargo, que el demandado-apelante José Gutierrez David al comprar el terreno en litigio estaba convencido honradamente de que el referido gravamen no le afectaba por ser nulo y sin valor *ab initio* el contrato del cual nace el gravamen.

A la luz de las consideraciones arriba expuestas, somos de opinión que Maria Socorro Magat debió haber sido ordenada por el Juzgado *a quo* al pago del importe del préstamo, como la obligada principal. Este errór del Juzgado *a quo* no aparece como uno de los errores señalados por los apelantes. Sin embargo, creemos que se puede corregir este error por ser muy aparente. (Artículo 5, Regla 53 de los Reglamentos; Dilag *vs.* heirs of Resurrección, 76 Phil., 651).

Habiendo llegado á esta conclusión, opinamos que no es necesario ya resolver los demás puntos de error suscitados por los demandantes-apelantes, porque este lo suficiente para determinar definitivamente los derechos de las partes.

En meritos de todo lo expuesto, se declara al demandado-apelante José Gutierrez David dueño absoluto de la parcela de terreno descrita en la demanda con derecho a la posesión de la misma.

Se ordena á la demandada-apelada Maria Socorro Magat que pague á los demandantes-apelantes la suma de ₱4,000 con interés legal de 6 por ciento el año desde la fecha en que ella vendió el terreno á Andres Eusebio hasta su completo pago, dentro del periodo de tiempo de 90 dias, desde que quede firme esta decisión; y en caso de que ella dejase de pagar su obligación, por equidad, se ordena al demandado-apelante José Gutierrez David que pague dicha cantidad y sus intereses legales de 6 por ciento al año, desde la presentación de la demanda hasta su completo pago.

Con esta modificación, se confirma la decisión apelada en todo lo demas.

No se hace ninguna pronunciamiento especial en cuanto a las costas.

Reyes y *Pecson, MM.*, están conformes.

Se modifica la sentencia.

[No. 7912–R. April 8, 1954]

EMILIANA TUPAS VDA. DE ATAS, as Administratrix of the Estate of ANTONIO B. ATAS, plaintiff and appellant, *vs.* CHINA BANKING CORPORATION, ET AL., defendants and appellees.

1. SALE; VENDOR CANNOT TRANSFER TO VENDEE A BETTER RIGHT THAN HE HAD HIMSELF; EXCEPTION IN CASES OF PROPERTY WITH TORRENS TITLE.—It is well known that the rule that a vendor can not transfer to his vendee a better right than he had himself, suffers an execption in cases of property with Torrens Title. (Hernandez *vs.* Katigbak Vda. de Salas, 69 Phil., 748).
2. LAND REGISTRATION; POSSESSION AND ENJOYMENT OF REGISTERED PROPERTY; SALE OF REGISTERED PROPERTY; PURCHASER NOT REQUIRED TO INQUIRE BEYOND WHAT CERTIFICATE OF TITLE INDICATES.—Possession and enjoyment of registered property are not in themselves incompatible with ownership in another, and are not sufficient indications of adverse claim; where not supported by adequate entry or notation in the Certificate of Title

(that by express provision of law is indefeasible), such possession and enjoyment are presumed not to be in the concept of an owner. In cases of registered property, the purchaser is not required to investigate beyond what the certificate of title indicates (Hernandez *vs.* Katigbak, *supra;* Reynes *vs.* Barrera, 68 Phil., 658).

3. ID.; ENTRY BOOK, EFFECT OF ANNOTATION IN.—An entry annotation of a deed produces no legal effect unless a memorandum thereof is noted in the Certificate of Title (Bass *vs.* De la Rama, 73 Phil., 682, 686, revoking Gov't. *vs.* Aballe, 60 Phil., 986 and Director of Lands, *vs.* Abad, 61 Phil., 479), specially where no steps are taken for two years to perfect the recording. Third persons are justified in such a case, to assume that the uncompleted registration has been abandoned.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Enriquez, *J.*

The facts are stated in the opinion of the court.

Fulgencio Vega and *Emilio Eligio* for plaintiff and appellant.

Eduardo P. Arboleda for defendants and appellees.

REYES, *J. B. L., Pres., J.:*

This case was turned over by the First to the Third Division in the interest of a prompt disposition thereof. It involves the appeal of Emiliana Tupas, as Administratrix of the Estate of the late Antonio B. Atas, from a decision of the Court of First Instance of Occidental Negros (Civil Case No. 1089) dismissing her complaint asking that said Atas be declared the true owner of lot No. 299 of the Cadastral Survey of Bacolod.

The facts are, for the most part, unquestioned. Said lot No. 299 of the Bacolod Cadastre and its improvements were originally decreed under Act 496 in the name of Ramon Moreno in the year 1915 (Exhibit I), and the Provincial Register of Deeds had issued therefor Original Certificate of Title No. 1857 in his name. On July 13, 1920, Moreno sold the property to Eugenio Sobrevilla (Exhibit G), and the latter alienated it in favor of Agata Rivera, who in turn sold it on February 4, 1925 to the late Antonio B. Atas (Exhibit F) with the right of redemption within one year, although no redemption was made. None of these sales appears to have been registered or annotated in the certificate of title or in the books of the Register of Deeds, but Jose Melliza, testfying for the plaintiff in the court below, claimed that the various deeds, from Moreno to Sobrevilla, from the latter to Rivera, and from Rivera to Atas, were sent in 1926 to Bacolod for registration. Apparently, record was refused because the documents were not accompanied by the owner's duplicate of the certificate of title, and in fact the entry fee was not paid until very much later, when Melliza was commissioned by Attorney Potenciano Treñas of Iloilo to inquire why registration was not accomplished.

In 1928, said lot No. 299 was levied upon by virtue of execution issued in Civil Case No. 4267 of the Court of First Instance of Occidental Negros, entitled "Pacific Commercial Co. *vs.* Ramon Moreno and Jovita Concha", in order to satisfy the judgment against the defendants. And on October 15, 1928 the sheriff sold the property to the China Banking Corporation (Exhibits 3 and 4–*a*, Gonzaga). No redemption having been made, the sheriff executed the final deed of sale in favor of the purchaser on November 9, 1929, and it was confirmed by the court by order of December 10, 1932 (Exhibit 3–Gonzaga). Consequently, the Register of Deeds cancelled Original Certificate No. 1857 in the name of Ramon Moreno, and on June 6, 1933, Transfer Certificate of Title No. 16105 was issued in the name of the China Banking Corporation. Later that same month (on June 28), the China Bank sold the property of the appellee spouses, Adoracion Gonzaga and Fernando Ereñeta (Exhibit 4–Gonzaga), and they were issued Certificate of Title No. 16219 in their name.

Antonio B. Atas instituted action in 1933 in the Court below (Case No. 6274) seeking to set aside the judicial sale to the China Banking Corporation and the latter's conveyance to the Gonzaga-Ereñeta spouses, and the annulment of Transfer Certificates of Title Nos. 16105 and 16219, on the ground that when the levy and sale by the sheriff took place, Ramon Moreno was no longer the owner of lot 299 of the Bacolod Cadastre. The case was pending at the outbreak of the last war but its records were destroyed, and being unable to reconstitute the same, the present case was filed by his Administratrix. The defendants denied knowledge of the transfers by Moreno, Sobrevilla, and Rivera, and pleaded reliance on the records of the Register of Deeds.

The court below declared both the China Bank and the Ereñeta spouses to be purchasers in good faith and with superior title to that of plaintiff. The latter then appealed to this court, assigning as errors the following.

I. The lower court erred in not holding that the answer of the defendant-appellee China Banking Corporation is equivalent to a general denial and in allowing the said defendant-appellee to cross-examine the witnesses of the plaintiff-appellant and to present its evidence.

II. The lower court erred in not holding that because plaintiff-appellant or any of her predecessors-in-interest or anybody in her name or behalf did not make a third party claim when the Provincial Sheriff of Occidental Negros attached lot No. 299 of the Cadastral Survey of Bacolod and sold it in public auction by virtue of a writ of execution in Civil Case No. 4267 of the Court of First Instance of Negros Occidental, wherein Ramon Moreno was the judgment debtor, plaintiff-appellant cannot have a right superior to those of defendants-appellees China Banking Corporation and Adoracion Gonzaga.

111. The lower court erred in not allowing plaintiff-appellant to present evidence to show that from 1925 to 1933, rentals for lot No.

299 of Bacolod was collected by the late Antonio B. Atas through his encargados, Mr and Mrs. Juan C. Lagman.

IV. The lower court erred in not declaring the deed of sale executed in 1928 by the Provincial Sheriff of Occidental Negros in favor of the defendant-appellee China Banking Corporation and that executed by the latter in favor of the defendant-appellee Adoracion Gonzaga, involving lot 299 of the cadastral survey of Bacolod, null and void.

V. The lower court erred in holding that plaintiff-appellant does not have a right superior to those of defendants-appellees China Banking Corporation and Adoracion Gonzaga with respect to lot No. 299 of the Cadastral Survey of Bacolod.

As to the first error assigned, we are of the opinion that while the China Bank should not be allowed to evade its duty to comply with section 7 of Rule 9, by an untruthful plea that it was without sufficient knowledge or information sufficient to form a belief as to the truth of the main allegations in the complaint, still the error in this case was not prejudicial to the plaintiff-appellant, for the reason that it had been fully apprised of the defenses of the China Banking Corporation through the amended answer filed by it in the preceding litigation (Civil Case No. 6274 of the Court of First Instance of Bacolod) that was discontinued. As a matter of fact, it was plaintiff-appellant who presented her copy of the said amended answer as its own Exhibit D, and the allegations thereof convey adequate information about the defenses and position of the Bank. There was therefore no surprise nor unfair advantage.

The other assignments of error formulate the issue on the merits. The pivotal fact is that plaintiff's own evidence shows that none of the transfers from Moreno to Sobrevilla, then from him to Rivera, and lastly, from Rivera to Atas, was ever recorded in the Office of the Register of Deeds of Occidental Negros, notwithstanding that the transferees all knew that the land was registered, and Torrens Certificate of Title No. 1857 issued for it. Witness Melliza expressly testified that when the plaintiff-appellant, Vda. de Atas, delivered the three conveyances to the office of Attorney Treñas for recording, he did not see among them any certificate of title corresponding to the land in question (t. s. n. p. 24), and such certificate was indispensable for the recording. The records of the Register's office show, in addition, that while the *pacto de retro* sale from Rivera to Atas was entered in the Daybook on October 30, 1926, the recording was never completed due to the nonpresentation of the Certificate of Title and of the deed of sale to Rivera from Sobrevilla (t. s. n. pp. 54–55).

By way of contrast, it was amply proved that the levy made by the Sheriff upon the lot in question and the deeds of sale executed by said official in favor of the China Banking Corporation were duly recorded; that by order of the Court of First Instance, issued in Cad. Case No. 2, G.L.R.O.

Record No. 55, under date of December 10, 1932 (Exhibit 3–Gonzaga)—

> "Se ordena a los referidos Ramon Moreno y Jovita Concha hagan inmediata entrega de los certificados de titulo Nos. 128, 1857, 1932, 1931, 2087, y 2991, sobre dichos lotes, al Registrador de Titulos, á quien se ordena que, mediante la presentacion de los certificados de venta correspondientes expedidos por el Sheriff Provincial de esta provincia a favor de la China Banking Corporation, cancele dichos certificados de titulo y en su lugar expida los certificados de transferencia de titulo correspondientes a favor de la China Banking Corporation sobre los lotes arriba mencionados. En el caso de que Ramon Moreno y Jovita Concha no presenten al Registrador los referidos titulos dentro del plazo de 10 dias a partir de la fecha de esta orden, dicho funcionario proseguira a cumplir con esta orden sin la presentación de dichos certificados de titulo, los cuales, por la presente, se declaran nules y de ningun valor."

and pursuant to such order, Certificate No. 1857 was cancelled and replaced by Certificate No. 16105 in the name of the China Banking Corporation; later on, in 1933, this certificate was in turn cancelled and another (No. 16219) issued in the name of the spouses Ereñeta-Gonzaga, to whom lot No. 299 had been sold by the Bank.

On the basis of these facts, the Court below correctly held that valid ownership vested in the China Banking Corporation, as against the voluntary transferees of Moreno, even if the unrecorded transfers to them were prior in date. It is well known that the rule that a vendor can not transfer to his vendee a better right than he had himself, suffers an exception in case of property with Torrens title. The prevailing doctrine in this jurisdiction is summarized thus by former Chief Justice Morán in Hernandez *vs.* Katigbak Vda. de Salas, 69 Phil., 748 (Resolution on Motion to Reconsider):

> "The doctrine in Lanci *vs* Yangco (52 Phil., 563), which purports to give effect to all items and encumbrances existing prior to the execution sale of a property registered under the Torrens system, even if such liens and encumbrances are not noted in the certificate of title, has been abandoned by this court. (See Philippine National Bank *vs.* Camus, G. R. No. 46870, June 27, 1940). The new doctrine, from which we have no reason to depart, is that, in an execution sale of a land registered under the Torrens system, the purchaser acquires such right and interest as appear on the certificate of title, unaffected by any prior lien or encumbrance not noted therein. (Anderson & Co. *vs.* Garcia, 35 Off. Gaz., 2847, sec. 39, Act No. 496, as amended by Act 2011.) The purchaser is thus "not required to explore farther than what the Torrens title, upon its face, indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure, would entirely be futile and nugatory." (Reynes *vs.* Barrera, G. R. No. 46724, September 30, 1939.)
>
> The only execution to this rule is where the purchaser had knowledge, prior to or at the time of the levy, of such previous lien or encumbrance. In such case, his knowledge is equivalent to registration and taints his purchase with bad faith. Gustilo *vs.* Maravilla,

48 Phil., 442; La Urbana *vs.* Bernardo, 62 Phil., 790; 23 C.J., sec. 812; Parsons Hardware Co. *vs.* Court of Appeals, G. R. No. 46141). But if knowledge of any lien or encumbrance upon the property is acquired after the levy, the purchaser cannot be said to have acted in bad faith in making the purchase and therefore, such lien or encumbrance cannot effect his title."

But the appellant urges that from 1927 to 1932, Atas was in possession of the land through his *encargado* and was collecting rents from its occupants, and that each fact vitiates the title of the Bank and its successors in interest. Possession and enjoyment of *registered* property are not in themselves incompatible with ownership in another, and are not sufficient indications of adverse claim; where not supported by adequate entry or notation in the Certificate of Title (that by express provision of law is indefeasible), such possession and enjoyment are presumed not to be in the concept of an owner. In cases of registered property, as stated in the doctrine quoted, the purchaser is not required to investigate beyond what the certificate of title indicates. Had the claim been directly called to his attention by third party claim, the case might be different. While Atas may not have been strictly obligated to file such claim in a litigation where he was not a party, it would have prevented the China Bank from alleging good faith.

As to the 1926 entry notation of the deed of sale from Rivera to Atas, as shown by Exhibit H, suffice it to recall that the Supreme Court has ruled that such annotations produce no legal effect unless a memorandum of the corresponding instrument is noted in the Certificate of Title (Bass *vs.* De la Rama, 73 Phil., 682, 686, revoking Govt. *vs.* Aballe, 60 Phil., 986, and Director of lands *vs.* Abad, 61 Phil., 479). The China Bank could not be expected to scrutinize all the chronological entries in the Daybook when it purchased the lot in 1928; it had every reason to assume that said entry of 1926 had been abandoned, since no steps to perfect it had been taken for two years.

We are thus constrained to hold that neither the fact that the late Atas collected rents from the occupants of the lot in question, nor the existence of the uncompleted 1926 entry of the deed of sale from Rivera to tax, has the effect of rebutting the good faith of the China Banking Corporation as purchaser of Cadastral lot No. 299 of Bacolod.

The situation of the Ereñeta-Gonzaga spouses is even stronger than that of the China Bank. They took no part in the execution proceedings against Ramon Moreno when they bought the property, the Certificate of Title No. 1857 in his name had been cancelled, and they acquired it on the faith of Transfer Certificate of Title No. 16105 issued in favor of the Bank. To hold them guilty of constructive knowledge derived from the two circumstances heretofore discussed would be to compel them to look behind and be-

yond two different certificates of title (Nos. 1857 and 16105) both regular on their face. Such a requirement would be unreasonable.

> "In De la Cruz *vs.* Fabie (35 Phil., 144), it was held that, even admitting the fact that a registration obtained by means of fraud or forgery is not valid, and may be cancelled forthwith, yet, when a third person has acquired the property subject-matter of such registration from the person who appears as registered owner of same, his acquisition is valid in all respects and the registration in his favor cannot be annulled or cancelled; neither can the property be recovered by previous owner who is deprived thereof by virtue of such fraud or forgery." (Reynes, et al. *vs.* Barrera, et al., 68 Phil., 658)

In the last analysis, as declared by the Court below, the loss of lot 299 was due to the negligence of Atas himself and his predecessors, who had every opportunity from 1920 to 1928 to record their deeds of acquisition. They knew that Certificate of Title No. 1857 existed and they knew where it was, because Moreno's deed of sale to Sobrevilla recited that—

> "Mi certificado de Titulo obra actualmente en poder del Barco por haberlo adherido en la Central Bacolod-Murcia Milling Co., Inc. de esta misma provincia", (Exhibíto G)

so that their failure to protect their rights appears inexcusable.

The judgment appealed from is affirmed, with costs against appellant.

Ocampo and *Pecson, JJ.*, concur.

Judgment affirmed with costs.

[No. 10225–R. April 10, 1954]

BASILIA EUGENIO, ANTONIO EUGENIO, MATIAS EUGENIO, CONCEPCION EUGENIO, JUANITA EUGENIO, ALFREDO EUGENIO, REYNALDO EUGENIO, DIONISIA MEDINA and TRINIDAD MEDINA, plaintiffs and appellees, *vs.* EULOGIO LUZ, CAROLINA ANDRES, NEMESIO BARIA and PAULA LUZ, defendants and appellants.

1. EVIDENCE; SUPPRESSION OF EVIDENCE; PRESUMPTION.—It is now well-settled that when the testimony omitted is merely corroborative for one of the parties and rebutting for the other, the presumption of suppression of evidence is applicable to the latter (U. S. *vs.* Dinola, 37 Phil., 797; Staples *vs.* Bldg. & Loan Ass., 36 Phil., 417; U. S. *vs.* Kosel, 24 Phil., 594).
2. CONTRACTS; SUBJECT MATTER OF CONTRACT; REQUISITES.—Article 1273 of the old Civil Code requires that the subject matter of every contract must be a thing determinate with respect to its kind, that is, it must have definite limits; not uncertain or arbitrary; established; definite.
3. EVIDENCE; PAROL EVIDENCE; INHERENT DEFECTS OF INSTRUMENT, NOT CURABLE BY PAROL EVIDENCE.—The ambiguities of Exhibits 4, 5, 6, and 7 are patent from the face of each instrument, and

no amount of parol evidence, could cure their inherent defects. (Peish *vs.* Dickenson, Fed. Cas., No. 911; 1 Mason, 9).

4. PARTITION; ORAL PARTITION LEGAL.—An oral agreement of partition is for all intents and purposes legal.

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Belmonte, *J.*

The facts are stated in the opinion of the court.

Raquiza, Villaluz & Asuncion for defendants and appellants.

Coloma, Nalupta & Martin for plaintiffs and appellees.

PEÑA, *J.:*

This is an action for declaration of ownership and delivery of possession of the two-thirds portion of the land described as follows—

"Irrigated riceland and bounded on the North, by Zanja; on the east, by Saturnino Fabian; on the south, by Zanja; and on the west, by Clemente Samonte; with an area of 15,753 square meters, more or less, and which is more particularly described in Tax Declaration No. 32285–b–3 and valued at ₱620. Values and taxes paid for the current year. That there are no permanent improvements and its limits are visible by rice puddies."

Originally, the plaintiffs were only Basilia Eugenio, Antonio Eugenio and Dionisia Medina, but when the order declaring the defendants in default was lifted and it was discovered that there were other heirs who had the right to participate in the land in question, the lower court, by order of August 10, 1951, required the original plaintiffs to amend their complaint. Accordingly, on August 18, 1951, an amended complaint was filed increasing the plaintiffs to nine. According to the latter, they, together with one Cornelio Agustín, inherited the above-described property from one common predecessor by the name of Cecilia Lorenzo, and that Basilia Eugenio and Dionisia Medina and their uncle Cornelio Agustín were in possession of the same since the death of Cecilia Lorenzo, continuously, adversely, publicly and under claim of ownership up to 1943. In said year, however, Cornelio Agustín, without requesting from his co-owner's authority to dispose of their two-thirds undivided share, sold the whole parcel of land to Eulogio Luz and Nemesio Baria who personally know that it was a community property. Upon knowing what Cornelio Agustín had done, Basilia Eugenio and Dionisia Medina went to the defendants to ask for the reconveyance of their two-third undivided share to which request said defendants acceded and delivered on February 27, 1948, the western part of the above described parcel of land, containing an area of 6,663 which corresponds to two-thirds of the cultivated portion. Plaintiffs further aver that after the lapse of one week, defendants informed Basilia Eugenio and Dionisia Medina that they could not

remain in the possession of the land unless the ownership and possession of the same be finally determined by a court of competent jurisdiction.

On the other hand, defendants state in their answer that Cornelio Agustín exclusively owned the above-described parcel of land until December 19, 1943, and had possessed the same continuously, openly and adversely for a period of more than ten years; and that they never reconveyed any portion of the property to the plaintiffs. By way of special defense they further allege that on December 19, 1943, defendants bought from said Cornelio Agustín the property for ₱1,000 by virtue of a deed of sale executed by him before notary public Benito Caday. For these reasons, they pray for the dismissal of plaintiffs' complaint with costs against the latter.

After due trial, the lower court rendered decision, the dispositive portion of which is as follows—

"For all the foregoing considerations, the Court renders judgment declaring the plaintiffs owners of the two-thirds portion of the land described in the amended complaint, and the defendants are ordered to execute a deed in favor of the plaintiffs, transferring to them the possession thereof; to pay to them damages in the amount of ₱929 as the value of the products of which the plaintiffs were deprived since 1943 up to the present and to pay the costs."

Not satisfied with this judgment, defendants appealed and now maintain that the lower court erred—

1. In giving merit to the contention of the counsel for the plaintiffs that Exhibit 3 is tainted with circumstances of suspicion;
2. In holding that Cornelio Agustín failed to declare the land in question in his name because it belonged to him and the plaintiffs;
3. In holding that Exhibits "4", "7", "5" and "6", are bad documents and do not refer to portions of the land in question;
4. In holding that Exhibit 12 is irrelevant because the allege amicable settlement of expenses was not alleged in the answer;
5. In concluding that defendants failed to prove satisfactorily that the land in question belonged exclusively to Cornelio Agustín;
6. In holding that defendants knew at the time they bought the land in question that it belonged in common to Basilia Eugenio, Dionisia Medina and Cornelio Agustín;
7. In holding that on February 27, 1948, the defendants recognized the two-thirds portion belonging to the plaintiffs Dionisia Medina and Basilia Eugenio;
8. In believing the testimony of plaintiff Basilia Eugenio and her witnesses when their testimonies are full of contradictions, inconsistencies, and are inherently unnatural and incredible, and grossly perverted because of bias and interest;
9. In ordering defendants to execute a deed of conveyance in favor of the plaintiffs over two-thirds of the land in question, and in not declaring defendants to be absolute owners of the land in question to the exclusion of the plaintiffs; and
10. In ordering the defendants to pay ₱920 as value of the produce of the land of which plaintiffs were deprived.

There is no dispute that the land in litigation originally belonged to one Cecilia Lorenzo, common ancestor of the plaintiffs and Cornelio Agustín. However, the defendants

claim that during her lifetime, particularly in March, 1920, Cecilia sold all the tillable portion of the questioned land, consisting of approximately 11,000 square meters, more or less, to her son Cornelio, as evidenced by Exhibit 3.

Cecilia Lorenzo died sometime in 1924 and from then on up to 1943, according to plaintiffs Basilia Eugenio and Dionisia Medina, in their behalf and of their other brothers and sisters, and Cornelio Agustín, possessed the property in common through their tenants, Basilio Lucas and Francisco Corpus, as successors in interest of their deceased ancestor. During the same period, the three coowners jointly paid the real estate taxes, receiving and dividing among themselves into three equal parts the owner's share of the produce of the land, consisting of 4 *uyones* of palay, 5½ gantas of beans and mangoes and 200 ears of corn every agricultural year. The tax declaration remained in the name of Cecilia Lorenzo up to 1943.

As in December, 1943, Cornelio Agustín *sold* the whole parcel of land to the defendants (Exhibit 8), the latter took possession thereof, preventing plaintiffs' tenants from tilling and entering the same, of which fact tenant Francisco Corpuz duly apprised his landladies.

From the foregoing, it seems clear that appellants' claim over the land in question hinges on Exhibit 3 which, according to the trial court is tainted with circumstances that give ground to suspicion. A mere cursory examination of Exhibit 3 leads Us to suspect that it is the product of foul play. It is indeed difficult to believe that it is more than 30 years old. Its appearance alone, the glaring contrast between the writing itself and the thumb impression of Cecilia Lorenzo, and the further fact that it is undated, betray appellants' pretension that it was executed by her in favor of her son Cornelio sometime in March, 1920. The thumbmark appears quite clear and relatively fresh compared with its alleged existence of 34 years, while the writing is faded, diffused and hardly legible. The paper on which the instrument is drawn looks quite new and comparatively unscarred in spite of the fact that it has supposedly withstand three decade and 4 years. The more we examine Exhibit 3, the more we believe that we have before us a document cleverly conceived though clumsily executed. Our suspicion becomes stronger when we consider the fact that Cornelio Agustín was in Isabela in 1920, the time that Exhibit 3 was allegedly executed for he only came back therefrom sometime in 1923. Thus, Basilia Eugenio testified—

Q. Luciano Martín and Esteban Tagasa stated on the witness stand that your uncle Cornelio Agustín bought the land in question from your common predecessor, Cecilia Lorenzo, in 1920. Is that true?—A. That is not true, sir, because the fact was, that Cornelio

Agustín and I went together to Isabela and both of us stayed in that place for four years. (t. s. n., pp. 129–130.)

* * * * * * *

Q. Now. We do not seem to understand each other. My question is, whether from 1919 and four years after, 1923, you never came to Laoag?—A. We did not come to Laoag within that period of four years, but after that lapse of four years, we received a letter stating that my mother was ill so my uncle Cornelio Agustín brought me home. (t. s. n., p. 134.)

Defendants never rebutted this testimony. Cornelio Agustín is still living and they should have called him to testify to the truth of the aforequoted testimony or of the execution of the document (Exhibit 3). For this reason, we can reasonably assume that they had willfully suppressed his testimony because it would be adverse effect to them (Sec. 69 [*e*], Rule 123 of the Rules of Court). And it is now well-settled that when the testimony omitted is merely corroborative for one of the parties and rebutting for the other, the presumption of suppression of evidence is applicable to the latter (U. S. *vs.* Dinola, 37 Phil., 797; Staples *vs.* Bldg. & Loan Assn., 36 Phil., 417; U. S. *vs.* Kosel, 24 Phil., 594).

In their desire to offset what they had fatally omitted, defendants argue that the presence of Cornelio Agustín in Isabela would not render or make it impossible for Cecilia Lorenzo to execute Exhibit 3 in Solsona, Ilocos Norte. This maybe so, but they made us to believe that Cornelio Agustín and Cecilia Lorenzo had a conference, which must have taken place in Solsona, Ilocos Norte. The following testimonies of their witnesses, Luciano Martin and Esteban Tagama on this point are as follows—

"Q. During one of your visits, do you know if there was anything that ever transpired between Cecilia Lorenzo and Cornelio Agustín as regards this parcel of land?—"A. I know, sir.

"Q. What was that?—"A. That Cecilia Lorenzo told Cornelio Agustín, 'While I am still alive, I will be the one to enjoy of this land and when I will die it will be given to you as your inheritance.' (t. s. n., p. 65.)

* * * * * * *

"Q. You stated, Mr. Witness, that you know the agreement stated in Exhibit "3" that it is embodied therein as you have stated on the witness stand that the land will be given to Cornelio Agustín when the mother will die. Is that right?—"A. The agreement was this, sir: 'Now my son, I am very weak and during the rest of my life, I am the one yet to enjoy the fruits of the land and after my death, you will enjoy the fruits including the land." (t. s. n. pp. 81–82.)

Therefore, and after considering all the circumstances that have a bearing on the execution of Exhibit 3, we hold and declare that this instrument was merely forged upon the anvil of a sinister purpose to provide the missing link for Exhibit 8. But, as wisely said by the Supreme Court, it is universal both at law and in equity that what-

ever fraud creates justice will destroy (Oria *vs.* McMicking 21 Phil., 243).

If it were really true, as appellants endeavor to make us believe, that Cornelio Agustín had long acquired by purchase the land in question, it is quite strange that he would have thought to declare it in his name for taxation purpose only in 1943 which, coincidentally, is the same year that he sold it to the defendants. Bearing in mind the doctrine laid down by the Supreme Court in the case of Cruzado *vs.* Bustos, 34 Phil., 17, We can imply that the failure of Cornelio Agustín to declare the land in his name for taxation purposes, was due to the fact that he did not believe himself to be the owner of the land now in dispute.

While we may refrain from calling Exhibits 4, 5, 6 and 7 bad documents, as the lower court did, we would say that they were carelessly prepared. Exhibits 4 and 7 do not even describe the lands referred to, nor the portions mortgaged, while Exhibits 5 and 6 reveal different boundaries than those of the land in question. Article 1273 of the old Civil Code requires that the subject matter of every contract must be a thing determinate with respect to its kind, that is, it must have definite limits; not uncertain or arbitrary; established; definite.

Exhibits 4, 5, 6 and 7 were not even registered and therefore there was no valid mortgage even as between the parties thereto (Article 146, Mortgage Law; Article 1875 of the old Civil Code). Appellants themselves admit that Exhibits 4, 5, 6 and 7 are deficient as mortgage contracts and are devoid of the formalities required by law, they maintain that they may still be a good document as an equitable mortgage. Granting for the sake of argument that this is so, still it would be inconsequential to the plaintiffs who had no participation at all in the alleged mortgages. Plaintiff Basilia Eugenio testified—

> "If Cornelio Agustin happened to borrow some money from Esteban Tagama, the land which Cornelio Agustín placed as security of that loan was his own land and he did not include the land belonging to us." (t. s. n., p. 130).

And we may further say that the rights of plaintiffs cannot be prejudiced by the act, declaration or omission of Cornelio Agustín (Sec. 10, Rule 123).

The ambiguities of Exhibits 4, 5, 6 and 7 are patent from the face of each instrument, and no amount of parol evidence, could cure their inherent defects. Thus, the United States Supreme Court aptly said in the case of Peish *vs.* Dickson, Fed. Cas., No. 911; 1 Mason, 9—

> "If the language be too doubtful for any settled construction, by the admission of parol evidence you create and do not merely construe the contract. You attempt to do that for the party which he has not choosen to do for himself; and the law very properly denies such an authority to courts of Justice."

And Wigmore, citing a case, said that parol evidence was held inadmissible to cure a donation of a parcel of land without description (5 Wigmore on Evidence, 2nd ed., p. 414).

It is not true that the plaintiffs failed to object to the admission of Exhibit 12. Their counsel objected to all the exhibits of the defendants when their counsel offered and submitted them before the trial court—

ATTY. COLOMA:

"I interpose a general objection to all the exhibits presented by the defendants on the ground that they are inmaterial, impertinent and irrelevant; * * *." (t. s. p. 129).

That the land in question is a portion of the property described in Exhibit A is really discernible by comparing the description contained in Exhibit A and that of the land herein involved. As a certain Clemente Samonte succeeded María Bartolomé, naturally the former becomes the adjacent owner on the West. Thus, Basilia Eugenio testified on this point—

Q. On the West?—A. María Bartolomé before but now Clemente Samonte, (t. s. n., pp. 2 and 23.) She further testified, thus—

Q. Do you know why that portion which is now under question was segregated from the greater portion of the big parcel of land and declared in the name of Cecelia Lorenzo?—A. That small portion now declared in the name of Cecilia Lorenzo before and now declared in my name was segregated during the Japanese occupation because several vendees of that bigger portion did not receive their corresponding share of the fruits; that is why they divided or agreed to divide or partition the land, taking for themselves what they bought and the remainder which I have just described and which had an area of one hectare more or less was declared in the name of Cecilia Lorenzo. (t. s. n., pp. 24, 25.)

Basilia Eugenio was not one of those who acquired the other portions of Cecilia Lorenzo's properties described in Exhibit A, because when asked if she was "one of the vendee of these different portions", she answered, *"no sir; only my grandfather."* (t. s. n., p. 26.)

Exhibit 3 is a private document which was purportedly executed by a mother in favor of her son to the exclusion of her other children. Indeed, appellants' pretension would want us to believe that Cecilia Lorenzo was so devoted to one of her children, Cornelio, to the prejudice of the rest. We could not believe this in the light of the suspicious circumstances of the execution of Exhibit 3. Moreover, considering the circumstances above mentioned that Cornelio Agustín declared the property for taxation purposes only in 1943; that after the death of Cecilia Lorenzo in 1924 up to 1943, the plaintiffs together with their uncle Cornelio Agustín, possessed the property in common, paying jointly the real estate taxes; and the fact that the private instrument of sale (Exhibit 3 was not

recorded in the registry of property, following the doctrine laid down in the cases of Ocampo et al. *vs.* Bautista, CA–G. R. No. 8141–B, September 6, 1952, L. J., Vol. XVIII, January 31, 1953; Tanato *vs.* Sañiel et al., 36 Phil., 933, we held that said sale is fictitious and of no value.

As Exhibit 12 was timely objected to by plaintiffs and properly excluded by the trial court, it cannot affect plaintiff Dionisia Medina, much less Basilia Eugenio who is not a party thereto. Plaintiffs' share from the stony portion of the land in question cannot be made to answer for the alleged funeral expenses as debt of the estate of Cecilia Lorenzo because the plaintiffs had already paid their share in the funeral expenses.

The defendants are plaintiffs' cousin and nephews of Cornelio Agustín. They live in the place where the land in dispute is situated and used to see the plaintiffs in the land. For this reason, we hold that the lower court had grounds to declare that defendants knew before and at the time of the sale (Exhibit 8) that the questioned land was owned in common by the plaintiffs and Cornelio Agustín. As a matter of fact Eulogio Luz himself admitted that Cornelio had told him that the plaintiffs had a share in the stony portion of the land herein involved. Thus, he declared—

"Q. Did Cornelio tell you that Basilia Eugenio and Dionisia Medina have interest in the stony portion of the land?—A. He said they had interest in the stony portion." (t. s. n., p. 117).

We are satisfied by the evidence on record that on February 27, 1948, the defendants recognized that the two-thirds portion belonged to the plaintiffs Dionisia Medina and Basilia Eugenio. Hereunder is the testimony of Basilia Eugenio to this effect—

"Q. Will you state before this Honorable Court the circumstances under which you were able to meet them?—A. On that day, February 27, 1948, we met each other with Nemesio Baria and Eulogio Luz in that place of Bubusa, Bungcayao, Solsona, Ilocos Norte, and once we were there, the land was divided into three parts, the tillable portion; each portion was then segregated and then after segregating the three portions each one of us picked one-third and Dionisia Medina picked one-third." (t. s. n., p. 7.)

The aforequoted testimony is corroborated by Basilio Lucas who said—

"Q. What did you do? Will you please state to this Honorable Court?—A. That they divided the land I also cooperated in the partition of the land because as a matter of fact I handled the string which they used in the division. (t. s. n., p. 45.)

* * * * * * *

"Q. Is it true, Mr. Lucas, that during the time when this land was partitioned, that was on February 27, 1948, Nemesio Baria and Eulogio Luz were also present within the premises of this land?—A. They were also there.

"Q. And did Nemesio Baria and Eulogio Luz also participate in the partition?—A. Yes, sir; as a mater of fact, all of us participated." (t. s. n., pp. 46–47.)

That an oral agreement of partition is for all intents and purposes legal has already been declared so by the Supreme Court in the case of Hernández *vs.* Andal, No. L–273, promulgated March 29, 1947. And as the defendants freely participated in the partition, they are now estopped from denying and repudiating the consequences of their own voluntary acts. It has already been ruled in the case of Joaquin *vs.* Mitsumine, 34 Phil., 858, that it is a general principle of law that no one may be permitted to disavow and go back upon his own acts, or to proceed contrary thereto.

As the point raised by appellants in their eight assignment of error is one of credibility of witnesses, we do not feel justified, after reviewing the record of this case, to disturb the findings of the trial court with regard to the testimonies of Basilia Eugenio and her witnesses.

Upon the whole, we are convinced that two-thirds of the land conveyed by Cornelio Agustín to the defendants belong to the plaintiffs whose consent and authority he never sought from them. Accordingly, it was unlawful for him to arrogate unto himself the power to dispose the property owned in common by him together with the plaintiffs, and, for this reason, the trial court correctly ordered the defendants to execute a deed of conveyance over the two-thirds portion of the land in dispute in favor of the plaintiffs.

As to the damages, we are likewise convinced that the plaintiffs were deprived of the produce of the land which correspond to them, which is worth more that ₱929, but as they did not appeal against such finding of the trial judge, we cannot grant more than what he provided in his decision.

Wherefore, the appealed judgment, being in accordance with law and the evidence, is hereby affirmed, with costs against appellants.

It is so ordered.

Felix and *Rodas, JJ.* concur.

Judgment affirmed.

[No. 9210–R. April 20, 1954]

LEOCADIA AÑONUEVO, in her own behalf and as guardian *ad litem* of ARTEMIO MERCADO, plaintiffs and appellees, *vs.* NATIONAL POWER CORPORATION, defendant and appellant.

WORKMEN'S COMPENSATION ACT; EMPLOYER AND EMPLOYEE; TEST TO DETERMINE WHETHER A PERSON IS AN EMPLOYEE OF ANOTHER.—The test by which to determine whether a person is an employer

of another, under a workmen's compensation act, is to ascertain whether, at the time the injury was suffered, the other was subject to such person's orders and control and was liable to be discharged for disobedience of orders or misconduct. (Alimar *vs.* Yangco, G. R. No. 42565, March 29, 1935, citing Schneider on Workmen's Compensation Law, Vol. I, 2nd ed., Sec. 17, p. 161—Francisco, Labor Laws, 813; 71 C. J. S. 421–423).

APPEAL from a judgment of the Court of First Instance of Laguna. Ortega, *J.*

The facts are stated in the opinion of the court.

Federico C. Alikpala and *Fernando A. Umali* for defendant-appellant.

Tomas Añonuevo for plaintiff-appellee.

GUTIERREZ DAVID, *J.:*

At about 8 o'clock in the morning of November 17, 1943 Serapio Mercado and Alejandro Yasto, laborers of the Caliraya Electric Plant, in Lumban, Laguna, were ordered by their foreman Derfín Quirólgico to clear the electrified fence built around the premises, of coconut leaves that fell on the fence during the typhoon the day before, according to the plaintiffs, or to clean the water canal located within the power house compound, according to the defendant. While working on the premises, Serapio Mercado unfortunately got in contact with the said electrically charged wire fence and, as a result thereof, he received an electric shock of which he died immediately thereafter.

On account of this violent death, Eugenio Canapi, allegedly the guard in charge of the switch, was criminally charged in the Justice of the Peace Court in Lumban with homicide through reckless imprudence (Exhibit H) but due to the fact that said accused after having been bailed out could not be located, the case was dismissed provisionally.

On April 26, 1949, Leocadia Añonuevo, in her own behalf and as guardian *ad litem* of her son Artemio Mercado, commenced this action under the Workmen's Compensation Act in the Court of First Instance of Laguna against the National Power Corporation seeking to recover the sum of ₱12,000 representing damages which they allegedly suffered by reason of the death of Serapio Mercado, husband and father of plaintiff Leocadia and Artemio respectively. The defendant corporation interposed, as defenses, that the damages claimed are not recoverable under the law that Serapio Mercado was not an employee of the National Power Corporation but of the Taiwan Electric Co., Ltd.; that the death of Serapio Mercado was due to his own notorious negligence; and that the defendant corporation was not in operation and had no income in

1942 and it cannot, therefore, be held liable to pay compensation under the Workmen's Compensation Act.

The Court of First Instance of Laguna having rendered judgment ordering the defendant corporation to pay unto plaintiffs the sum of ₱1,597.60 with legal interest thereon from the time of the filing of the complaint until paid, plus the costs of the suit, the defendant corporation has taken this appeal claiming that the trial court committed reversible errors, to wit: (1) in holding that during the Japanese occupation, the defendant was in operation and that Serapio Mercado was its employee at the time of his death; (2) in not finding that the death of Serapio Mercado was due to his own notorious negligence; (3) in finding that notice of the fatal accident and claim for death benefits were duly filed by the plaintiffs in accordance with the provisions of sections 24, 25 and 26 of the Workmen's Compensation Act; (4) in holding that the defendant corporation had knowledge of the fatal accident that befell the deceased on the very day it happened; (5) in not finding that the defendant had no income for the year 1942; and (6) in sentencing the defendant to pay the plaintiffs the sum of ₱1,597.60 with legal interests thereon from the filing of the complaint until fully paid and the costs of the suit.

To our mind, the pivotal question here is whether the deceased Serapio Mercado was at the time of his death an employee of the defendant corporation so that the latter may be held liable, under the Workmen's Compensation Act, to pay the damages claimed. Defendant-appellant maintained below and insists here that the deceased was not its employee for shortly after the occupation of the City of Manila and the surrounding provinces by the Japanese Forces, the properties of the National Power Corporation early in 1942 were taken over and placed under the control and supervision of the Imperial Japanese Forces. By its Exhibits 1 to 6 and the testimony of its manager, Mr. Filemón C. Rodríguez, and employees Antonio Fuentes, Antonio Oarga and Bonifacio Guevara, appellant has established the following facts:

On March 7, 1942, the Commander-in-Chief of the Imperial Japanese Forces in the Philippines issued a directive (Exhibit 1) decreeing the dissolution of the Board of Directors of the defendant and ordering the Chairman of the Philippine Executive Commission to appoint its "important personnel" subject to the approval of the Director General of the Japanese Military Administration. At the same time, the immediate resumption of the construction of the Caliraya River Hydroelectric Project—the main enterprise of the National Power Corporation until the outbreak of the last war—was ordered so that it would be completed as promptly as possible, but the work should be carried on

under the supervision of a Japanese supervisor to be sent by the Japanese Imperial Forces.

The Chairman of the Philippine Executive Commission, however, did not appoint the "important personnel" of the National Power Corporation as indicated in the aforesaid directive, but on March 17, 1942, the Japanese Military Administration appointed a Chief Administrator, Assistant Administrator and Adviser-Auditor to assist the Administrators, all of whom were Japanese nationals who were entrusted with the management of the National Power Corporation. (Exhibit 2.) Japanese engineers were brought to the Philippines who were placed in key positions and supervised the completion of the Caliraya Hydro-electric Project.

On May 24, 1942, the Director General of the Japanese Military Administration advised the Chairman of the Philippine Executive Commission that beginning July 1, 1942, "all work" of the National Power Corporation would be "managed by the Taiwan Denryoku Kabushiki Kaisya under the military control". (Exhibit 4.) This was later confirmed by a proclamation issued on July 1, 1942 by the head of the Communications Department of the Japanese Military Administration. (Exihibit 5.) On the same day, to wit, July 1, 1942, J. Masuda, President of the Taiwan Electric Power Co., Ltd. issued a circular "to the employees of all electric power enterprises of the Philippines" advising them that the Taiwan Electric Power Co., Ltd. had taken over the management of the said entities and as of July 1, 1942, they were already "under the employ of the Taiwan Electric Power Co., Ltd." although in general, their respective positions and salaries would "remain the same for the time being". (Exhibit 6.) A Japanese by the name of Watanabe was appointed Superintendent of the Plant and as such he had the direct control of the operation of the electric plant including the appointment of employees and laborers whose services were needed from time to time.

At the time the accident occurred, there was a garrison of the Japanese Armed Forces within the compound of the Caliraya Hydroelectric Plant. For their protection against the attack of "guerrillas", the Japanese soldiers, sometime in 1943, constructed a wire fence surrounding the power house compound which was charged with electricity and with which Serapio Mercado got in contact and was electrocuted.

In arriving at the conclusion that Serapio Mercado was an employee of the appellant at the time he met the fatal accident the trial court reasoned out that the defendant-appellant had not been dissolved, not absorbed by, and incorporated into, the Taiwan Electric Co., Ltd.; that according to the documents presented by appellant,

the National Power Corporation was ordered to resume operation and the executive office staff and workers were directed to carry on their duties as they had done before; and that the fact that in Exhibit I, the bail bond filed for the provisional liberty of Eugenio Canapi in the criminal case for homicide through reckless negligence, the General Manager of the Taiwan Denryoku Kabushiki Kaisya, (Taiwan Electric Co., Ltd.) referred to the accused, Eugenio Canapi, as " an employee of the National Power Corporation" in its Caliraya Electric Plant, is indicative that the Taiwan Electric Company considered the National Power Corporation in operation and those working in its Caliraya Electric Plant as employees thereof.

In Alimar *vs.* Yangco (G. R. No. 42565, March 29, 1935, citing Schneider on Workmen's Compensation Law, Vol. I, 2nd ed., Section 17, p. 161—Francisco, Labor Laws, 813) it has been held that the test by which to determine whether a person is an employer of another, under a workmen's compensation act, is to ascertain whether, at the time the injury was suffered, the other was subject to such person's orders and control and was liable to be discharged for disobedience of orders or misconduct. American decisions also held that the tests in determining the existence of the relation of employees and employers under a workmen's compensation act, are: whether one party as employee

> "is within the direction, control, supervision, or orders of the other as master or employer, as to the details of the work and the means, manner or method of its performance, and as to the terms, kind, character, results, and duration of the employment. Control has been called the vital element, and the most significant in all cases, and the right of control the final test. It has also been required that the employer have the responsibilty for the work."
>
> "The control has been required to be complete, authoritative, general, or ultimate, more suggestion as to detail or supervision to see that the work is performed according to contract being insufficient; likewise, ultimate direction has been required."
>
> "The test of the relationship is the employer's right to exercise control, and not to actual exercise of control by him; as otherwise stated, it is not his actual interference in the manner and method of accomplishing the result, but his right so to interfere.
>
> "The retention by the alleged employer of the right to direct what work shall be done, and what not, has been called an important factor in determining the relationship. The right of the employer to control the work, when applied as a test of whether the relationship of employer and employee exists, has been held to include the right to determine the hours of service and the exclusive right to the time demanded." (71 C. J. S. 421–423)

Viewing the case at bar in the light of the foregoing tests, we are constrained to conclude that at the time of his death, Serapio was not an employee of the defendant

and, therefore, the latter is not liable for the damages claimed. The facts on record clearly disclose that during the time he (Serapio) was working in the power house at Lumban—from August, 1942, when he was hired until the date of his death on November 17, 1943—the appellant National Power Corporation was no longer in operation as a corporate entity. Its Board of Directors, in which its corporate powers were vested, according to its Charter (Commonwealth Act No. 120) and under the direction of which the affairs and business of the corporation had been conducted, was dissolved by order of the Commander-in-Chief of the Japanese Imperial Forces. All its properties and operation had been taken over and placed under the control, management and direction of the Imperial Japanese Forces not for the promotion and attainment of the objective for which the corporation was created but for the exclusive use and benefit of the Japanese nation in connection with the prosecution of the war. The Taiwan Electric Co., Ltd., which took over the management and assets of the defendant corporation was a mere instrumentality of the Japanese Forces in this country. Since July 1, 1942, the defendant-corporation did not have any legal right to hire or discharge employees or laborers in the electric plant in question or to exercise control over them. Persons working for the defendant corporation were from that date declared to be "under the employ of the Taiwan Electric Power Co., Ltd." (Exhibit 6). Members of the Japanese Military Administration were appointed as Chief and Assistant Administrators, respectively; another Japanese as Adviser-Auditor to assist the Administrators, and still another Japanese (Mr. Watanabe) as Superintendent. All employees were warned that whoever violates the orders of the Japanese Administrators will be punished severely. Serapio Mercado was hired while the defendant corporation was under the administration and management of the Taiwan Electric Co., Ltd.

Our sympathies are certainly with the plaintiffs, but under the facts of record and in view of the surrounding circumstances, we do not feel justified in holding that a relation between the deceased and the defendant, as employee and employer ever existed, so as to make the latter liable for the damages sought for.

Having arrived at the foregoing conclusion, we deem it unnecessary to discuss the questions raised under the other assignment of errors.

Wherefore, the appealed judgment is hereby reversed and the complaint of plaintiffs-appellees dismissed without pronouncement as to the costs.

Dizon and *Martinez, JJ.*, concur.

Judgment reversed.

[No. 10260-R. April 28, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MANFREDO JOEL, defendant and appellant

CRIMINAL LAW; QUALIFIED THEFT; ACCUSED NOT CRIMINALLY LIABLE FOR TEMPORARY USE OF THE THING BY MEMBER OF HIS FAMILY WITHOUT HIS KNOWLEDGE AND CONSENT.—The office of the Solicitor General recommends the reversal of the appealed judgment and the acquittal of the accused, without prejudice to the filing of another charge for the proper offense, upon the ground that, in its opinion, the crime of qualified theft "was not committed because the defendant lawfully took the properties in question and had them all the time in his possession ready to return them on demand. The fact that in his absence, a member of his family made temporary use of two or three pieces of steel matting does not affect the innocence of the accused, for such use, without his knowledge, cannot constitute a taking and/or conversion by him of the goods entrusted to his care."

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, *J.*

The facts are stated in the opinion of the court.

Tomas Gomez, Jr., for defendant and appellant.

Assistant Solicitor General Lucas Lacson and *Acting Solicitor Antonio M. Consing* for plaintiff and appellee.

DIZON, *J.:*

This is an appeal from the decision of the Court of First Instance of Samar finding Manfredo Joel guilty of qualified theft and sentencing him to an indeterminate penalty of from 2 years and 4 months to 6 years of *prisión correccional,* and to pay the costs.

The prosecution evidence discloses that on November 24, 1950 Tranquilino Salazar, of the Bureau of Public Works of Calbayog City, delivered to Aquilino Duguman 27 pieces of steel matting on the strength of a receipt signed by appellant and approved by the City Engineer of Calbayog. The receipt stated that the steel mattings were to be used in the construction and improvement of the road around the hospital building. According to José Balabas, Assistant City Auditor of Calbayog, said steel mattings were part of the materials removed from the repaired national and city projects in the districts of Tinambaco, Malopolo and Quezon, and the national bridge located in Oquendo.

On March 24, 1952 a search was made in the house of appellant on the strength of a search warrant issued against him on the same day. In the course thereof, 17 steel mattings were found in his house and 7 more were found being used as pigsty. All the 24 pieces were brought to the police headquarters and subsequently used as evidence against him (Exhibits E, E–1 to E–23).

Appellant was investigated by the police department of the City of Calbayog the following day and as a result thereof he executed the sworn statement now in the record as Exhibit A.

The prosecution evidence also discloses that when appellant, as permanent property clerk in the Bureau of Public Works, Calbayog City, rendered a report as to the property under his official custody, he failed to include therein the steel mattings in question.

Upon the other hand, the defense evidence sought to establish that the 27 steel mattings in question were not the property of the City of Calbayog; that said steel mattings were requisitioned by appellant for use in the construction and improvement of a public road; that they were used for that purpose until the works were discontinued; that appellant never attempted to hide or conceal them or to make use of them for his own benefit and to the prejudice of the City of Calbayog.

Defense witness Alejandro Presto testified that the steel mattings in question originally belonged to the Filipino Regiment of the United States Liberation Army and that said regiment left them with him and other carpenters who worked for the U. S. Army in opening the roads to the north; that upon receipt of the steel mattings he placed them in the bodega of the Bureau of Public Works of Calbayog and allowed them to be used in the constructions of public improvements.

Appellant, in turn, testified that he signed a receipt for the 27 pieces of steel mattings in question, with the approval of the City Engineer who knew all the time that the same were in his possession and were used in the construction of hospital roads; that when the construction of said roads was temporarily stopped in March, 1951, believing that the same would be resumed soon, he did not return the steel mattings to the bodega but placed them instead under the custody of his *sub-capataz,* Antonio Fuertes; that subsequently he took 24 of them from the possession of the latter and brought them to his own house because he was personally responsible for them, and requested Fuertes' mother-in-law to tell the latter to see him about the other three; that Fuertes subsequently told him that the other pieces were under his house; that he did not include these steel mattings in his inventory as property clerk because Alejandro Presto had claimed them to be his property; that several pieces were used for his pigsty without his knowledge as he was then in Catbalogan; that he only learned of this fact when the search was made.

Upon the facts which may be considered as conclusively established by the evidence of record, the Office of the Solicitor General recommends the reversal of the appealed

judgment and the acquittal of appellant, without prejudice to the filing of another charge for the proper offense upon the ground that, in its opinion, the crime of qualified theft "was not committed because as already shown, the defendant lawfully took the properties in question and had them all the time in his possession ready to return them on demand. The fact that in his absence, a member of his family made temporary use of two or three pieces of steel matting does not affect appellant's innocence, for such use, without his knowledge, cannot constitute a taking and/or conversion of the goods entrusted to his care." (Appellee's brief, pp. 7–8).

We are in agreement with the recommendation stated above. The evidence shows that appellant's possession of the steel mattings in question was authorized by the City Engineer of Calbayog and, when he received them, he issued the corresponding receipt. There was at no time any attempt on his part to conceal them. They were transferred to the house of his *sub-capataz* and later to his own house, due to the temporary suspension of the construction of the road in which they were used. The fact that appellant retained them in his possession for safekeeping was justified, considering his not unreasonable expectation that the construction of the road around the hospital would be resumed sooner or later. Neither was any intent to gain on the part of appellant proven. There is absolutely no evidence showing that he ever attempted to dispose of all or some of the steel mattings, which he could have easily done if it had ever been his intention to convert them to his own use and benefit. The fact that some of them were temporarily used as pigsty, without his knowledge and consent, is not sufficient to constitute a taking or conversion of the goods entrusted to his care.

We agree with the recommendation made as above stated upon the further ground that the ownership of the steel mattings in question has not been conclusively established. In this connection it appears that Digno Lugunos, appellant's successor as property clerk, testified that the steel mattings in question were not included in the complete inventory of the papers, records and property of the City Engineer's Office made in the presence of representatives of the City Auditor and Treasurer for the reason that there were no records in any office showing that the City of Calbayog owned said steel mattings. Upon the other hand, there is in the record the unrebutted testimony of Alejandro Presto to the effect that he owns the steel mattings in question.

Upon all the foregoing, we are therefore of the opinion and so hold that the appealed judgment should be, as it is hereby, reversed and appellant is acquitted, with costs *de oficio*.

This acquittal, however, shall be without prejudice to the filing of a charge for malversation of public property should the City of Calbayog be in a position to establish conclusively its ownership of the steel mattings mentioned herein and other elements of the crime.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Judgment reversed and appellant acquitted.

[No. 11341–R. April 28, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FLORENCIO CRUZ, defendant and appellant

1. CRIMINAL LAW; EVIDENCE; DYING DECLARATION; CASE AT BAR.—The fundamental objection regarding the admissibility of the declaration of the deceased, is that same was not made by the deceased while he was conscious of an impending death and that the deceased did not state therein that he had no hope to survive his wound or he was about to die. It is a fact, however, that the deceased, after being wounded could not walk anymore and he suffered a serious perforatory wound caused by a high powered .45 caliber pistol on a vital portion of the body, and it is highly improbable that he expected to survive from his injury. * * *. During the taking of his declaration, he was lying in bed extremely weak and his face was "a picture of agony" (People *vs.* Abedosa, 53 Phil., 790–791). The fact that he died 3 days after the shooting does not affect the nature of the said declaration. It has been held that "* * * the circumstances that he thereafter recovered sufficiently to engender the belief that he was going to live, does not render the declaration inadmissible where death in fact results from the same injury" (People *vs.* Lara, 54 Phil., 96). The trial court, therefore, did not err in admitting the said declaration as a declaration in *articulo mortis* of the deceased.

2. ID.; ID.; ID.; "RES GESTAE."—Granting for the purposes of argument that the declaration of the deceased is not a dying declaration, still it may be considered as part of the *res gestae*, (Sec. 33, Rule 123). It is stated that "although a declaration does not appear to have been made by the declarant under the expectation of a sure and impending death, and for that reason, is not admissible as a dying declaration, yet, if such declaration was made at the time of, or immediately after the commission of the crime, or at a time when the exciting influence of the startling occurence still contained in the declarant's mind, it is admissible as a part of the *res gestae*" (III Moran's Rules of Court, Rev. 1952 Ed. p. 369, 376, citing People *vs.* Palamos, 49 Phil., 601; People *vs.* Portento, 48 Phil., 871; People *vs.* Reyes, 52 Phil., 538).

APPEAL from a judgment of the Court of First Instance of Manila. Pecson, *J.*

The facts are stated in the opinion of the court.

Tugade, Santos & Canta for defendant and appellant.

Assistant Solicitor General Francisco Carreon and *Solicitor Isidro C. Borromeo* for plaintiff and appellee.

PAREDES, *J.:*

The present appeal seeks the reversal of a judgment rendered by the Court of First Instance of Manila, finding the accused Florencio Cruz guilty of homicide and sentencing him to suffer an indeterminate penalty ranging from 6 years and 1 day of *prisión mayor* to 12 years and 1 day of *reclusión temporal,* with the accessories of the law; to indemnify the heirs of the deceased Roberto Deriaga, in the sum of ₱3,000, without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused Florencio Cruz and Roberto Deriaga were friends and both working as detectives at the headquarters of the Manila Police Department. According to the evidence adduced by the Prosecution, at about 3 o'clock in the morning of January 1, 1951, Deriaga and Cruz were joking and teasing each other at said headquarters. While they were exchanging jokes, Cruz called Deriaga "Balsa" which means raft. Deriaga pushed Cruz who was then starting to descend the stairs and the latter lost his balance, thereby causing his automatic pistol, caliber .45, which was tucked in his waist, to fall on the cement floor. Cruz bent to pick up the pistol and while doing so, directed the following words to Deriaga: "Putang ina mo, babarilin kita" and aimed and fired his gun at Deriaga who was hit at the lower right anterior iliac region. The bullet came out on the upper right of the gluteal region. The victim was taken for operation to the hospital where his declaration, Exhibit C, was taken. Three days after the operation, Deriaga died. The medical examination conducted by Dr. Angel Singian, Medical Examiner, MPD, shows that Deriaga died of "Toxemia from localized peritonitis, following gunshot wound in the abdomen, perforating the intestines and fracturing the right ilium." (Exhibit A). Exhibit C, which was taken by Detective Corporal Benjamin Calderon at 3:35 a.m., January 1, 1951, in Ward 7 (emergency room) PGH is hereunder reproduced:

I

"Q. What happened to you?—A. I was shot by Detective F. Cruz.
Q. Why did he shoot you?—A. We were joking.
Q. What did Detective F. Cruz tell you before you were shot?—A. He called me Balsa".
Q. What did you do in turn?—A. I pushed him jokingly.
Q. What did he do in return?—A. He fired at me. He aimed his gun twice at me. I think the gun was in half-cock as it was already loaded.
Q. Did Detective F. Cruz tell you anything before he fired at you?—A. He said, "Putang Ina Mo babarilin Kita".
Q. Did anything else happen before you were shot?—A. We were just joking. After I pushed him, his gun fell somewhere on the fifth step but he picked up the gun and aimed at me twice. At first he did not fire the gun, but at the second aiming the gun went off and I was hit.

II

Q. Do you have any grudge against Detective F. Cruz before this shooting?—A. None.

Q. Does Detective F. Cruz have any bad feeling against you?—A. None.

Q. Why were you near the stairs at that time?—A. I was intervening in behalf of my friend Mr. Garcia who was in Co. with a bondsman. Mr. Garcia was in the office in connection with a mahjong game which was raided.

Roberto Deriada

Roberto Deriada

Additional:

Q. Where was your gun at the time you were shot?—A. It was in the drawer of the counter of the Desk Officer.

Q. You mean to say you did not have the gun in your person at the time you were shot?—A. No, I did not have it in my person.

—Unable to sign as operation was commenced—

B. N. C."

The defense, however, contended that the killing of Deriaga was accidental and has the following story to offer: That on the hour and date in question, Cruz and Deriaga were joking with each other, and also talking about people being hit by stray bullets during New Year's eve; that Lt. Fernando Dujua announced they would then resume patrolling the city; that when Cruz stood to go down the stairs, Deriaga pushed him from behind and as a result Cruz lost his balance, and his pistol which he kept in half-cocked safety in his left hip pocket, fell; that Cruz immediately turned to prevent it from hitting the cement and to pick it up and while in the process of putting it back to his left hip pocket, after having picked it up, the gun exploded, and Deriaga, who was about 2 to 3 meters to his side was hit; that Cruz went down the stairs and surrendered himself and his gun to Lt. Dujua.

Counsel alleges in his brief that the trial court erred (1) In having considered Exhibit C as *ante mortem* declaration and in having admitted it as evidence; (2) In having given weight and value to said Exhibit C; (3) In not holding that the shooting and death of Deriaga was purely accidental; (4) In not appreciating the mitigating circumstance of "voluntary surrender" and "lack of intention to commit so grave a wrong", in addition to the circumstance of "obfuscation" already considered in favor of the accused; and (5) In not having acquitted the appellant.

It seems that the fundamental objection regarding the admissibility of Exhibit C, quoted at length in the early part of this decision, is that same, according to appellant, was not made by the deceased while he was conscious of an impending death and that the deceased did not state in his declaration that he had no hope to survive his wound or he was about to die. Considering, however, the fact that Deriaga, after being wounded could not walk anymore and that he suffered a serious perforatory wound caused

by a high powered .45 caliber pistol on a vital portion of the body, it is highly improbable that he expected to survive from his injury. While he was answering the questions asked to him by Detective Calderon, the wounded man, was writhing in pain because of the wound. In fact, he could not even sign his additional declaration (Exhibit C–1) because he had to be taken to the emergency room of the hospital for immediate operation to save his life. According to Dr. Singian, the bullet perforated the victim's intestines, causing an infection, due to bacteria, of the surrounding area and while modern medicines have reduced the mortality of this kind of infection (peritonitis), in this particular case, however, modern medical science completely failed. And Detective Calderon testified that there was hurry in operating the victim because "according to the doctor his condition then was serious and he had to be operated in order to survive" (t. s. n. 26). In fact, Deriaga, during the taking of his declaration was lying in bed extremely weak and his face was "a picture of agony" (t. s. n. 30). (People *vs.* Abedosa, 53 Phil., 790–791). The fact that Deriaga died 3 days after the shooting does not affect the nature of the said declaration. It has been held that "* * * the circumstance that he thereafter recovered sufficiently to engender the belief that he was going to live, does not render the declaration inadmissible where death in fact results from the same injury" (People *vs.* Lara 54 Phil., 96). We believe, therefore, that the trial court did not err in admitting Exhibit C as a declaration *in artículo mortis* of the deceased Deriaga. But granting for the purposes of argument that Exhibit C is not a dying declaration, still it may be considered as part of the *res gestae,* (Sec. 33, Rule 123). The statements of Deriaga given to Detective Calderon which was reduced by the latter into Exhibit C was spontaneous and trustworthy. There was no opportunity for Deriaga to fabricate considering the time that had elapsed between the infliction of the wound (3:20 a.m.) and the taking of the declaration relating to it (3:35 a.m.); and the attendant excitement, mental and physical condition of Deriaga then. It is stated that "although a declaration does not appear to have been made by the declarant under the expectation of a sure and impending death, and for that reason, is not admissible as a dying declaration, yet, if such declaration was made at the time of, or immediately after the commission of the crime, or at a time when the exciting influence of the startling

occurrence still continued in the declarant's mind, it is admissible as a part of the *res gestae*" (III Moran's Rules of Court, Rev. 1952 Ed. p. 369, 376, citing People *vs.* Palamos 49 Phil., 601; People *vs.* Portento 48 Phil., 871; People *vs.* Reyes 52 Phil., 538). We have no reason to doubt that Detective Calderon had taken down accurately the answers to the questions appearing on Exhibit C, written by him personally and signed by the deceased declarant. So that giving the contents of said Exhibit C its correct value and worth, we find that appellant had killed the deceased on the day in question which must have been motivated by a deep feeling of resentment towards Deriaga in having pushed him. According to Exhibit C, after the pushing, appellant before actually firing at the deceased, warned the latter with the statement: "Putang Ina mo babarilin kita". When he received the push from Deriaga, appellant himself remarked, according to his own testimony, "Masama ka namang magbiro; mabuti hindi pumutok ang baril ko" (t. s. n. 3).

Even discarding altogether Exhibit C, we still hold that the killing of the deceased was not accidental. Appellant admitted that the pistol was in half-cocked safety when it was tucked in his left hip. Under that condition, the pistol could not be fired unless its hammer was fully opened and its trigger pulled. When a .45 caliber automatic pistol is in a half-cocked safety, no amount of pressure exerted would be sufficient to move its trigger; and when it is fully cocked, one would be able to pull the trigger and fire the pistol, even with the slightest pressure. So that, the only way by which the present pistol could have been fired was to open the hammer and pull the trigger. In the supposition therefore, that when the pistol in question fell on the cement floor, the hammer had struck the cement in such a manner that the same had fully opened, thereby disentangling itself from the safety position, a minimum pressure to the trigger was needed to fire the pistol. On the latter supposition, the appellant must have pulled the trigger of the pistol, just the same, for it would not have fired by itself without such pressure. Major Amadeo M. Cabe of the AFP, Chief, Criminal Investigation Laboratory, MPD, and ballistic expert testified:

"* * * When the pistol is at half cocked, you can not fire that pistol even with pressure on the trigger and also put on the grip pressure on the trigger and also put on the grip with pressure on the grip of the pistol, it must be fully cocked and with at least pressure on both on the trigger and on the grip * * *" (t. s. n. 58).

"* * * Because if that part of the gun (safety grip) is not pressed at all no matter how you pull the trigger of the gun it will never fire, it will never release the hammer of the gun to strike the firing pin to expel it * * *" (t. s. n. 60).

"A. If the finger is inserted into the trigger guard and with pressure made on the trigger and also on the safety grip, the guard will explode" (t. s. n. 60).

Q. In grabbing the pistol as it falls down is there any possibility for the hammer to be pushed backward?—A. If the hammer is not touched at all it will not" (t. s. n. 63.)

Major Caba's discourse on ballistics is more than sufficient to show that in order to explode his pistol, the appellant must have pulled the hammer at full-cock, pulled the trigger and pressed the safety grip. The appellant even admits:

"Q. Is it not a fact that when the gun is half-cocked even if you squeeze the trigger it will not explode?—A. That is right." (t. s. n. 39).

It cannot be pretended, with any degree of plausibility, that the bullet went off, accidentally, as soon as the pistol reached the cement floor, because Lt. Dujua declared:

"Q. Did you see him actually picked up the pistol?—A. Yes.

Q. Did it explode before he picked it up or not?—A. No.

Q. Do you mean to say it exploded after he had picked up the pistol?—A. Yes, your honor (t. s. n. 22)."

Patrolman Orencio Garcia said that after hearing the detonation, he "saw Detective Cruz and Detective Deriaga staring and looking at each other" and the pistol was "in the hand of Detective Cruz" (t. s. n. 10). And the appellant was also certain that "the gun did not explode when it fell down" (t. s. n. 39). Had not the appellant been the one who killed the deceased, he would not have presented himself to Lt. Dujua and admitted: Teniente, naka accidente ako".

We are fully convinced, that the appellant Florencio Cruz is guilty beyond reasonable doubt of homicide, mitigated by the circumstances of obfuscation and voluntary surrender, without any aggravating circumstance to offset them. We, therefore, sentence him to suffer an indeterminate penalty ranging from 2 years, 4 months and 1 day of *prisión correccional* to 6 years and 1 day of *prisión mayor,* to indemnify the heirs of the deceased Roberto Deriaga in the sum of ₱3,000, without subsidiary imprisonment in case of insolvency and to pay the costs. So ordered.

De Leon and *Natividad, JJ.*, concur.

Judgment modified.

[No. 11546-R. April 28, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* LORESTO SAAVEDRA, defendant and appellant

CRIMINAL LAW; OCULAR INSPECTION WITHIN COURT'S DISCRETION.—It is within the discretion of the trial court whether or not to conduct an ocular inspection, and when almost a year had

already elapsed from the date of the commission of the crime, the court below may deem it unnecessary to make an ocular inspection of the scene of the incident on the ground that the conditions of the place might have charged.

APPEAL from a judgment of the Court of First Instance of Quezon. Victoriano, *J.*

The facts are stated in the opinion of the court.

Pedro G. Uy for defendant and appellant.

Solicitor General Juan R. Liwag and *Solicitor Jose G. Bautista* for plaintiff and appellee.

PEÑA, *J.:*

Loresto Saavedra was accused of murder, in the following information filed in the Court of First Instance of Quezon:

"That on or about the 7th day of September 1952 in the barrio of Veronica, municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab with a knife one Eulalio Soria, thereby inflicting upon the latter mortal stab wounds in the different parts of his body which caused the instantaneous death of said Eulalio Soria."

After due trial Saavedra was convicted only of homicide and, appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, the lower court sentenced him to suffer an indeterminate penalty of from 6 years, and 1 day of *prisión mayor* to 12 years and 1 day of *reclusión temporal,* to the accesories of the law, to indemnify the heirs of the deceased, Eulalio Soria, in the sum of ₱6,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment the accused appealed and now comes before Us praying for his acquittal on the ground that he killed Eulalio Soria in self-defense.

To secure one's acquittal upon this justifying circumstance the accused should not rely upon the weakness of the evidence of the prosecution but on the strength of his own (People *vs.* Ansoyon, 52 Off. Gaz., 1238), that is there must be clear and convincing evidence, not of doubtful veracity, as otherwise conviction would become imperative (People *vs.* Berio, 59., Phil., 533).

Guided by these rulings, we shall now analyze the facts that allegedly and ultimately lead to the killing of Eulalio Soria. According to the accused, he attended a dance at the "Bahay Nayon" ni Veronica, Lopez, Quezon, on September 6, 1952. At about 4 o'clock in the following morning, just after he had danced with one Milagros, Eulalio Soria, holding the accused's arm, said: "What

are you, you are a married man and you are dancing." Replying, Loresto told Eulalio not to interfere, and having notice the altercation, Arter Florido intervened and pacified Soria and Saavedra. Loresto further declared that thereafter, he again danced with Milagros, and he again danced with Milagros, and then joined the orchestra by playing a clarinet. As the dance was already over, he left the hall at about 5 o'clock in the morning and while walking alone towards the house of his father-in-law, Eulalio Soria suddenly struck him on the forehead with a piece of round bamboo, measuring 1 meter long and 1½ inches in diameter, causing him to fall on a sitting position. While in such position, he was again hit on his left hand and to avoid further blows, the accused approached and embraced Soria who succeeded in holding the former's neck and tried to choke him to death, but the accused remembering that he had his automatic knife in his pocket, draw it out, pressed it open and then stabbed Soria from left to right, wounding him on the right base of the neck. Soria then released his grasp on Saavedra's neck and held the latter's arm, trying to wrest the knife from him. In the scuffle, the accused—so he claims—fell on the ground and Soria placed himself on the former's lap and held his hand, still trying to snatch the knife. At this juncture, according to the accused, he succeeded in pushing and stabbing his adversary several times. As Saavedra became fearful, he threw his knife and ran to his father-in-law's house where he changed his clothes. Thereafter, he went to town and surrendered to the chief of police to whom he related what had happened, but refused to put his declaration in writing. The injuries sustained by him were treated by Dr. Jose Alonzo (Exhibit 4).

From the foregoing, it is plain that the accused wants us to believe that he was not only able to survive the blow inflicted upon him on the forehead by Eulalio Soria, who was much bigger, taller and better built than the former, with a piece of round bamboo measuring one meter long and one half inches in diameter, but also able to release the hold of the latter upon his neck and finally killed him with his knife. This is too much for us to believe, for with the violent impact of a round piece of bamboo of that size on his forehead, we feel certain that at least the accused would have fallen unconscious and rendered unable to scuffle with his stronger protagonist and to inflict upon him no less than eighteen wounds. Moreover, we are convinced by the location of the mortal wounds, that Eulalio Soria was stabbed from behind, as testified to by the witnesses for the prosecution who, from an elevated place at a distance of about 30 meters saw accused Lores-

to Saavedra stabbed the deceased on the back of the right shoulder. Counsel for appellant, however, maintains that those witnesses could not have seen the tragic afray, from where they allegedly were and that for this reason, the lower court should have made an ocular inspection of the scene of the incident. In ruling on the request for ocular inspection of the place, the court said—

"If the Court thinks that there will be a need for it, the Court will have the ocular inspection."

It is within the discretion of the trial court whether or not to conduct an ocular inspection, and considering that almost a year had then already elapsed from the date of the commission of the crime, the court below deemed it unnecessary from making an ocular inspection, for the conditions of said place on September 7, 1952, might have changed. Within the period of one year, the grasses and bushes, must have grown considerably, rendering it quite difficult and impracticable to determine where or not they would have obstructed the view from the elevated portion where the prosecution witnesses claimed to have seen how Eulalio Soria was stabbed by Loresto Saavedra.

Even Loresto claimed that he alone killed Eulalio Soria, however, the record satisfactorily shows that Loresto was not the only one who inflicted the eighteen wounds upon the deceased. That at the preliminary investigation the Justice of the Peace of López, Quezon, acquitted Teofilo Hernández and Rafael Serbano from the killing of said Eulalio Soria, is of no importance, and We deem unnecessary to discuss the second assignment of error, at this stage of this case.

Counsel for appellant endeavors to discredit the testimonies of witnesses Rafael Rebadulla and Arturo Noriesta, but reviewing the record of this case, we find no circumstance of weight or influence that was overlooked by the trial court in determining their credibility. Before a witness can be impeached by reason of evidence given or statements made at other times inconsistent with his latest testimony, it is necessary that the previous statements be related to him, with reference to the circumstances of time, place and persons present, so that he be allowed to explain them (Sec. 92, Rule 123.). As counsel for appellant failed to comply with this requirement, the trial court correctly sustained the objection of the fiscal on the ground that counsel had not laid proper foundation for the impeachment of said witnesses. At any rate, a comparison of the statements of Rafael Rebadulla and Arturo Noriesta contained in their affidavits (Exhibits 1 and 3) with their testimonies in court does not show any

substantial conflict. For this reason, the attempt to destroy their credibility on the basis of their affidavits cannot prosper.

There is no sufficient showing that it was Eulalio Soria who provoked the fight and that no attack or aggression was made by him upon the accused. And where there is no unlawful aggression that came from the deceased, there can be no right to self-defense, complete or incomplete (U. S. *vs.* Caneco, 9 Phil., 544; People *vs.* Alconga, G. R. No. L–162, April 30, 1947).

In view of the foregoing, and the appealed judgment being in accordance with law and the evidence, the same is hereby affirmed, with costs against appellant.

It is so ordered.

Felix and *Rodas, JJ.*, concur.

Judgment affirmed with costs against appellant.

[No. 12293–R. April 30, 1954]

SIXTO RODRIGUEZ and PATRICIO CABULING, petitioners, *vs.* HONORABLE DEMETRIO ENCARNACION, Judge of the Court of First Instance of Rizal, and the PROVINCIAL SHERIFF OF RIZAL, respondents.

PLEADING AND PRACTICE; MOTION FOR CONTEMPT; PERSONAL APPEARANCE OF ALLEGED CONTEMNER NOT NECESSARY; ORDER OF ARREST FOR PERSONAL NON-APPEARANCE OF ALLEGED CONTEMNER, ARBITRARY; CERTIORARI WITH PRELIMINARY INJUNCTION; CASE AT BAR.—The appearance of the herein petitioners was required in connection with the motions for contempt filed against them to afford them an opportunity to defend themselves against the charges therein made. This they had substantially complied with when on the date fixed by the court they appeared through counsel and submitted both oral and written explanations to exculpate themselves. Whether or not the explanations thus given were satisfactory, or whether or not the same should be considered as duly proven is immaterial for the purpose of this case. The fact remains that appearance was made through counsel and explanations were given. All that remained to be done thereafter would seem to be for the court to "investigate the charge and consider such answer or testimony as the accused may make or offer" (Section 5, Rule 64, Rules of Court) and afterwards to decide whether the explanations given—if any—were sufficient or not sufficient to relieve the alleged contemners from liability for contempt. Their personal appearance was not necessary for this purpose. Therefore, in issuing the order complained of providing for their arrest simply because they did not personally appear to submit the explanations was arbitrary and was issued with grave abuse of discretion. Section 3, Rule 64 of the Rules of Court, relied upon by the respondent judge, of course, grants authority to order the arrest of an alleged contemner to bring him into court, but such authority must be exercised with sound discretion and only when necessary to carry out the proceedings of the court. As held in Francisco et al. *vs.*

Enriquez et al., G. R. No. L-7058, decided on January 27, 1954, the power cannot be lawfully exercised when its purpose is to compel the personal appearance of the party charged with contempt after the latter had properly appeared through counsel to submit his explanation of answer to the charge.

ORIGINAL ACTION in the Court of Appeals. Certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

Ferdinand E. Marcos and *Cesar S. de Guzman* for petitioners.

Sotero H. Laurel and *Mariano V. Ampil, Jr.*, for respondents.

DIZON, *J.*:

The present proceeding is an original petition for certiorari with preliminary injunction filed by Sixto Rodriguez and Patricio Cabuling against the Honorable Demetrio Encarnacion, Judge of the Court of First Instance of Rizal, and the Provincial Sheriff of said province, the main purpose of which is to secure annulment of the order issued by said judge on January 15, 1954 for the immediate arrest of the petitioners.

It appears that on December 15, 1953 the respondent judge rendered judgment in Civil Case No. 2351, for mandamus with preliminary injunction, entitled Numeriano Roxas et al., *vs.* Sixto Rodriguez et al., the dispositive part of which is as follows:

"En su virtud, se declara a Numeriano Roxas como el presidente electo de la Philippine Air Lines Employees' Association en las eleciones del 30 de Septiembre de 1953, con una pluralidad de 38 votos sobre el recurrido Sixto Rodriguez; se declara también como verdadero triummfante al recurrido Napoleon Zapata para el cargo de vice-presidente de dicha associación, y en cuanto a los demas cargos, y no hay necesidad de pronunciamiento alguno, porque los demas cargos no están en cuestión, como arriba y se ha dicho. Se ordena que los referidos electos sean reconocides como presidente y vice-presidente, respectivamente, de la Philippine Air Lines Employees' Association. En cuanto a los gastos incurridos, ambas partes deben pagar por mitad, como costas, sin perjuicio de abonarse por adelantado por los recurrentes y cobrarse despues como costas contra la parte recurrida perdidosa.

"Considerando el resultado y arriba mencionado y la urgencia del caso, queda ordenada la immediata ejecución de esta decisión, y declara permanente el interdicto prohibitorio preliminar expedido."

On December 18 of the same year the respondents in said civil case filed their notice of appeal and appeal bond and on the 24th of the same month their record on appeal. On January 5, 1954 the respondent judge issued an order approving the record on appeal and directing the clerk to certify and elevate the same, together with all the evidence adduced during the hearing, to the appellate court, within the period prescribed by the rules.

On October 16, 1953 the petitioners in the aforesaid case filed a motion for contempt—Supplemented by another filed on January 12, 1954—praying that Sixto Rodriguez and Patricio Cabuling be punished for contempt for the reason that notwithstanding and in violation of the decision rendered and the writ of preliminary injunction issued by the court in said case, they had continued to discharge and arrogate unto themselves the duties of Union President and Secretary, respectively, of the PALEA (for Philippine Air Lines Employees' Association).

In connection with the motions referred to, the respondent judge issued on January 12, 1954 an order requiring Rodriguez and Cabuling to appear in his court on the following day at 8:00 o'clock in the morning, which order was duly served upon them. At the hearing held on January 13 pursuant to said order, Rodriguez and Cabuling, instead of appearing personally before the respondent judge, had Atty. Cesar S. de Guzman appear on their behalf to submit to the court their written reply or answer to the motions for contempt wherein, in the first place, they denied the jurisdiction of the court to take cognizance of said motions in view of the fact that an appeal had already been perfected from the decision of said court of December 15, 1953; in the second place, they likewise questioned the jurisdiction of said court to take cognizance of the contempt proceedings against Patricio Cabuling because the latter was not a party to the case; and in the third place, they likewise denied all the allegations of the motions for contempt which, they averred, were false and without foundation in fact. In connection with this last point the reply or answer alleged that Rodriguez had not acted as Union President but merely as Acting Chairman of the Board of Directors of the PALEA, he having been duly recognized as such by resolution of the Board of Directors approved unanimously on December 19, 1953.

Notwithstanding the verbal explanations made by counsel and the reply or answer referred to above, the respondent judge issued the order complained of, and it was to prevent the arrest therein provided from being carried out that the present proceedings were commenced.

The dispositive part of the order complained of is of the following tenor:

"En virtud de todo lo expuesto, el Juzgado esta plenamente convencido que los dos recurridos Sixto Rodriguez y Patricio Cabuling han incurrido claramente en desacato al Juzgado, y no habiendo ellos comparecido ante este Juzgado, y estando aun en proceso de terminación este incidente para dictar la correspondiente sentencia, por la presente, ordena el arresto inmediato de dichos recurridos y quedaran detenidos en la carcel provincial hasta que manifiesten su deseo de cumplir la orden u ordenes de este Tribunal

antedichas, y que depende de ellos el obedecer o cumplir dichas ordenes, de acuerdo con la sección 7 de dicha Regla 64."

As may be clearly inferred from the paragraph preceding the dispositive part quoted above, the order of arrest was issued by the respondent judge in the exercise of the authority granted by the provisions of the last paragraph of section 3, Rule 64 of the Rules of Court to the effect that nothing provided in said section "shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings." In fact, on page 3 of their memorandum dated March 11, 1954, respondents stated the following: "First and foremost, be it remembered that the Order of Arrest was not in pursuance to a finding of guilt after proper hearing for contempt. The order was only a preliminary warrant of arrest to apprehend petitioners so they can appear to answer the charges of contempt." It must be borne in mind likewise that although, in the words of the respondent judge, "los dos recurridos Sixto Rodriguez y Patricio Cabuling han incurrido claramente en desacato al Juzgado", it cannot be denied that the order complained of was not His Honor's resolution on the matter of contempt before him because in the order complained of His Honor clearly states that the contempt incident was still "en proceso de terminación * * * para dictar la correspondiente sentencia". In other words, it is obvious that the arrest of the herein petitioners was orderd for the only reason that they had failed to personally appear before the court on January 13, 1954.

The question before us, therefore, may be reduced to the following:

The herein petitioners having appeared through counsel on January 13, 1954 to submit—as they actually submitted —their oral and written explanations in answer to the allegations made in the different motions for contempt mentioned heretofore, was it lawful or was it in the exercise of sound judicial discretion for the respondent judge to order their arrest simply because they did not appear personally before him?

The issue thus to be determined seems to have been squarely settled by the Supreme Court in the recent case of Vicente J. Francisco and Francisco V. Marasigan *vs.* Honorable Eduardo Enriquez, G. R. No. L–7058 decided on January 27, 1954 in which it was held that the respondent judge therein was without legal authority to require the therein petitioners to personally appear before him in connection with a proceeding already had, namely, the proceeding in which they were required to appear and explain their failure to appear for the trial of the case therein involved. The appearance of the herein petitioners was required in connection with the motions for contempt

filed against them, that is, to afford them an opportunity to defend themselves against the charges therein made. This they had substantially complied with when on the date fixed by the court they appeared through counsel and submitted both oral and written explanations to exculpate themselves. Whether or not the explanations thus given were satisfactory, or whether or not the same should be considered as duly proven is immaterial for the purpose of this case. The fact remains that appearance was made through counsel and explanations were given. All that remained to be done thereafter would seem to be for the court to "investigate the charge and consider such answer or testimony as the accused may make or offer" (Section 5, Rule 64, Rules of Court) and afterwards to decide whether the explanations given—if any—were sufficient or not sufficient to relieve the alleged contemners for liability for contempt. Their personal appearance was not necessary for this purpose. We believe, therefore, that in issuing the order complained of providing for their arrest simply because they did not personally appear to submit the explanations was arbitrary and was issued with grave abuse of discretion. The legal provision relied upon by the respondent judge, of course, grants authority to order the arrest of an alleged contemner to bring him into court, but such authority must be exercised with sound discretion and only when necessary to carry out the proceedings of the court. As held in the Francisco et al. *vs.* Enriquez et al., case (supra) the power cannot be lawfully exercised when its purpose is to compel the personal appearance of the party charged with contempt after the latter had properly appeared through counsel to submit his explanation or answer to the charge.

Wherefore, the petition for certiorari is hereby granted and the order of January 15, 1954 complained of is hereby annulled and set aside and the writ of preliminary injunction issued herein declared final.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Petition for certiorari granted; order January 15, 1954 complained of annulled and set aside; writ of preliminary injunction issued herein declared final.

[No. 10205-R. May 8, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ULDARICO SAUSA, SULPICIO NATIVIDAD and BENJAMIN NIÑO, defendants and appellants.

CRIMINAL LAW; EVIDENCE; CONFESSION; CONVICTION EVEN IN THE ABSENCE OF INDEPENDENT PROOF OF AUTHORSHIP OF CRIME.—Even without some independent proof of authorship of the

crime committed, the accused person making the confession can be convicted if the confession has been given voluntarily. (Rule 123, sec. 14, Rules of Court.) The utility of the confession as a species of proof would vanish if it were necessary in addition to the confession, to adduce other evidence sufficient to justify conviction independent of such confession (People *vs.* Batangan, 54 Phil., 834). And confession is presumed to be voluntary until the contrary is proved. (Moran, Commentaries on the Rules of Court, Vol. III, p. 99, 1952 Rev. Ed).

APPEAL from a judgment of the Court of First Instance of Iloilo. Makalintal, *J.*

The facts are stated in the opinion of the court.

Glicerio G. Gimotea for defendants and appellants.

Assistant Solicitor General Francisco Carreon and *Solicitor Florencio Villamor* for plaintiff and appellee.

PECSON, *J.:*

The amended information upon which the accused-appellants have been convicted states as follows:

"AMENDED INFORMATION

"The undersigned City Fiscal amending his information accuses Uldarico Sausa, Sulpicio Natividad *alias* John doe and Benjamin Niño *alias* Richard Doe of the crime of frustrated murder, committed as follows:

"That on or about the 9th of September, 1951, in the City of Iloilo, Philippines, and within the jurisdiction of this court, the above-named accused, Uldarico Sausa, Sulpicio Natividad *alias* John Doe and Benjamin Niño *alias* Richard Doe, with deliberate intent, conspiring and confederating together with their co-accused Paul Doe who is still at large and his true name is unknown and whose case is pending in the Municipal Court of the City of Iloilo under Criminal Case No. 8129 for the same offense, without any justifiable motive and with a decided purpose to kill, with treachery (alevosia) and with evident premeditation did then and there willfully, unlawfully and feloniously suddenly attack, assault and hit from behind Alfredo M. Lustre with a piece of wood wrapped in paper with which the said accused Uldarico Sausa was provided, thus causing upon the said Alfredo M. Lustre the following wounds and injuries: one straight, lacerated wound on the right occipito-parietal region, one lacerated wound below and anterior to the first wound, contusion with superficial, linear wound on the posterior aspect of the middle third of the right arm, linear, superficial wound on the dorso-ulnar aspect of the middle finger of the left, gaping or diastatic fracture involving the left occipito-parietal wound, which lesions can be cured in not less than 30 days nor more than 90 days with medical treatment and incapacitating the said Alfredo M. Lustre in the performance of his ordinary labor during said period of time, thereby the said accused performed all the acts of execution which would produce the crime of murder as a consequence thereof, but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely intervention of medical assistance afforded upon the said Alfredo M. Lustre.

"Contrary to law.

"City of Iloilo, Philippines, October 9, 1951.

(Sgd.) "FILEMON R. CONSOLACION
"City Fiscal"

The prosecution has established the following facts: At about 9:30 o'clock in the morning of September 9, 1951, Alfredo Lustre, manager of the Iloilo branch of the Rehabilitation Finance Corporation, and Rafael de Jesus, a co-employee, were walking together along Lopez Jaena St., Molo, Iloilo City. A taxicab coming from the opposite direction passed them and it stopped about fifty meters away from them. Inside the taxicab were the three appellants. When it stopped, appellant Sausa slighted therefrom and stealthily approached Lustre and de Jesus from behind. Suddenly without warning, Sausa clubbed Lustre with a piece of wood twice in rapid succession on the back of his head thereby causing him to fall in a kneeling position. When his companion tried to lift him up, appellant Sausa stopped in front and inflicted a third blow but Lustre parried and it land on his right forearm. Immediately afterwards, Sausa fled from the scene and was chased by patrolman Carlos Macalalag who witnessed the assault from a short distance away and apprehended him.

Alfredo Lustre was taken to St. Paul's Hospital in a semi-conscious state and he was treated for forty-five days by Dr. Jose P. Cocjin for the injuries he suffered, after which he transferred to the Sto. Tomas University Hospital, Manila, under the medical care of Dr. Romeo Gustilo and then by Dr. Jose Eusebio for thirty-four days. He spent in all ₱4,500 for hospital and doctors's fees.

Dr. Jose P. Cocjin after examining Lustre issued the medical certificate (Exhibit B), dated September 11, 1951, showing the injuries that Lustre received, which is as follows:

"(1) A semi-conscious patient with symptons of cerebral concessions.

"(2) Linear straight lacerated wound of the scalp, five cm. in length and deep into the cranial bone.

"(3) Lacerated stellate-shape wound of two cm. in length, the whole scalp in depth.

"Both these two wounds (Items 2 and 3) located behind the right mastoid process.

"(4) Linear contucions posterior right forearm about five cm. in length.

"(5) x-ray of the skull taken; lateral and AP view showed the following findings quote, from X-ray report of St. Paul's Hospital 'Evidence of some gaping or diastatic fracture involving the left occipito parietal suture.'

"*Prognosis:* For external scalp wound, it is the impression of the undersigned that it will heal, barring any complications, from 7–12 days.

"Of the cerebral concession and of the cranial fracture mentioned above, the prognosis is reserved. However, healing of this 'gaping' or 'diastatic fracture' will take no less than 2 to 3 months.

"And again, complications of any head injury is to be reserved. As in most cases there are complications of headaches which may be persistent, and even epilepsy."

In the course of the investigation conducted by the police authorities, Sausa implicated the other appellants, Sulpicio Natividad and Benjamin Niño, as having instigated and induced him to commit the assault. Upon learning that they were being sought by the police authorities, Natividad and Niño presented themselves voluntarily and upon investigation they signed their respective written statements ((Exhibits C and D).

Sulpicio Natividad in his written statement (Exhibit C) made the following admissions:

"Q. Do you know where Uldarico Sausa is now?—A. He is confined in jail having been arrested while in the act of beating Mr. Alfredo Lustre.

"Q. When and where did Uldarico Sausa beat Mr. Lustre?—A. About 9:00 o'clock in the morning of September 9, 1951 at Lopez Jaena Street, Molo this City.

"Q. How did you come to know that Uldarico Sausa beat Mr. Lustre?—A. I know it because I was there.

"Q. Do you mean to say that you were in company with Uldarico Sausa when he beat Mr. Lustre in the morning of September 9, 1951?—A. Exactly, I and Benjamin Niño accompanied him.

"Q. Why did Uldarico Sausa beat Mr. Lustre?—A. Because I instructed him to do so.

"Q. Why did you instruct Uldarico Sausa to beat Mr. Lustre?—A. Because I was hired by Atty. Ramon Tabiana to do it and I also hired Uldarico Sausa to do the job for me.

"Q. When did Atty. Ramon Tabiana hire you for the job.—A. Last Friday afternoon when he approached me while I was standing in front of the Jaycee Club at O. R. Papa St.

"Q. Can you tell us here why Atty. Tabiana hired you to beat Mr. Alfredo Lustre?—A. No, I can not but he only proposed to me that if I can beat Mr. Lustre, he was going to pay me ₱500.

"Q. Were you alone when Atty. Tabiana talked to you about beating Mr. Lustre?—A. I was accompanied by Benjamin Niño.

"Q. Did Benjamin Niño have any knowledge of the transaction that was offered to you by Atty. Tabiana?—A. Yes, because he was present and I consulted him first before I accepted the offer of Atty. Tabiana.

"Q. Do you mean to make me understand that the transaction was agreed upon by the three of you, that is Atty. Ramon Tabiana, you and Benjamin Niño?—A. Yes.

"Q. After you have accepted the job that was offered to you by Atty. Tabiana in the afternoon of Friday, September 7, 1951 what did you do?—A. I began to make plans of how I would be able to beat Mr. Lustre. I remembered right away that I could utilize the services of Uldarico Sausa. Having received the initial sum of ₱50 that same afternoon from Atty. Tabiana, I and Benjamin Niño called Uldarico Sausa in the evening of the same day. I asked Uldarico Sausa if he could do the beating for me, I shall give him ₱100. Uldarico Sausa agreed and right that evening after I talked to him, I gave him ₱10. I instructed him to see me the following morning so that I could point to him Mr. Lustre. The following morning at about 11:00 o'clock, Uldarico Sausa, Benjamin Niño and myself were standing at Plaza Libertad directly in front of the RFC Bank. Mr. Lustre came out of the bank door and I pointed him to Uldarico Sausa. When Mr. Lustre had left, I instructed Uldarico Sausa to come back to the place at five o'clock in the afternoon and to beat Mr. Lustre while coming out of the

said bank. Exactly at five o'clock of the same afternoon, Uldarico Sausa, Benjamin Niño and I were waiting for Mr. Lustre to come out. Mr. Lustre came out of the bank hurriedly getting inside his car. He seemed aware that something was going to happen. We failed to beat him that afternoon.

"Q. Because you failed in your attempt to beat Mr. Lustre in the afternoon of Saturday, September 8, 1951, what did you do next?—A. On the same evening we were informed by Mr. Tabiana that the following morning, Mr. Lustre was sailing for Negros so that we planned to beat him at Muelle Loney. Before six o'clock of the following morning, that was Sunday, September 9, 1951, Benjamin Niño, Uldarico Sausa and I posted ourselves at strategic places in Muelle Loney because we have decided to beat him while in the act of boarding the steamer for Negros. The steamer left and Mr. Lustre failed to show up. Determined to accomplish our job of beating him that morning, the three of as took a colorum car and proceeded to Molo to look for him. We learned that Mr. Lustre was inside the church and as his automobile was not parked outside of the church, we knew that he was going to walk on his way home after the mass. We returned to Iloilo and dismissed the colorum car. Instead we got a taxi of the Iloilo Taxicab and return to Molo. On the way at Lopez Jaena street, somewhere in front of the house of Atty. Lacson, we encountered Mr. Lustre. He was walking with another man leisurely. When we were about fifty meters behind him, I stopped the taxi and ordered Uldarico Sausa to get off, follow Mr. Lustre and once close behind him to beat him. Uldarico Sausa succeeded in beating Mr. Lustre until the latter fell unconscious. Uldarico ran to escape but he was intercepted by a policeman who placed him under arrest. After seeing that, I and Benjamin Niño also left the place hurriedly.

"Q. Because you have accomplished that job for which you were hired by Atty. Tabiana, did you receive the ₱500 from him?—A. Only ₱400.

"Q. When did you receive the ₱400 from Atty. Tabiana?—A. The first ₱50 was received by me from him in the afternoon of September 7, 1951 after I have accepted his offer. In the afternoon of September 8, 1951 he gave to me another ₱30 the following day, that was Sunday, he gave me ₱70 and last Monday morning, he gave to Benjamin Niño the remaining ₱250.

"Q. Did you give to Uldarico Sausa the ₱100 that you have promised him?—A. No, sir."

Benjamin Niño in his affidavit (Exhibit D), likewise, made the following admissions:

"That in the afternoon of Friday, September 7, 1951, Sulpicio Natividad and I were together in front of the Jaycee Bowling Club at C. R. Mapa Street;

"That right then and there Atty. Ramon Tabiana approached us and he talked to us about giving ₱500 if we will agree to beat Mr. Alfredo Lustre of the RFC Bank;

"That we agreed to accept the offer and he gave to us ₱50 in advance;

"That immediately thereafter, Sulpicio Natividad and I have decided in utilizing the services of Uldarico Sausa, that is to do the beating of Mr. Lustre for which we will pay him ₱100;

"That we succeeded in convincing Uldarico Sausa to do the job for which we were hired by Atty. Tabiana, that is to beat Mr. Lustre;

"That right that evening of September 7, 1951, we gave to Uldarico Sausa the advance pay of ₱10, instructing him at the

same time to report to use the following day, Saturday, September 8, 1951 because we will point to him Mr. Lustre;

"That we made plans to beat Mr. Lustre on that same day, September 8, 1951 but our attempts failed;

"That the following day, Sunday, Sulpicio, Uldarico and I rode in a taxi to look for Mr. Lustre in Molo, determined to accomplish the job on that day;

"That we saw Mr. Lustre walking at Lopez Jaena street;

"That when our taxi was about 50 meters behind them, we stopped the taxi and ordered Uldarico to get off and to beat Mr. Lustre;

"That Uldarico succeeded in beating Mr. Lustre and that the following morning, September 10, 1951, Atty. Tabiana gave to me ₱250;

"That up to now Sulpicio and I have received from Atty. Tabiana only ₱400 of the ₱500 that he had promised to give us;"

The defense of the appellant, Sausa, is based on the following facts adduced by him: That on September 9, 1951, at about 9:30 in the morning, he was riding in a jeepney bound for Molo, Iloilo City; that he saw Lustre walking with a companion; that he recalled immediately the insult he received from Lustre about five days ago, and he alighted from the jeepney with the intention of beating him in order to scare him and give him a lesson; that while he was approaching Lustre, he picked a piece of wood on the road with which he beat Lustre; that when Lustre fell on his knees after beating him, he (Sausa) ran away, throwing the piece of wood, but he was pursued and apprehended by a policeman and taken to the police headquarters; and that he did not have any acquaintance with Natividad and Niño.

The defense of the appellant Natividad is an *alibi:* That at about 8:00 to 9:00 in the morning of September 9, 1951, he, together with Baldomero Millan, took a sailboat for Jordan, Guimaras Island; that they arrived at Jordan and stayed there with his parents-in-law until September 11, 1951, when he returned to the City of Iloilo; that from his arrival at Jordan on September 9, 1951 until he left for Iloilo City on September 11, 1951, he had not gone to Iloilo City; that upon his arrival in Iloilo City he was informed by his wife that Major Imperial, Chief of the Secret Service, was looking for him and he went immediately to the house of Major Imperial; that he was informed by Major Imperial that he was one of the suspects that beat Lustre; that Major Imperial called by telephone Detectives Cariño, Villaruz and Zaldivar and they took him to the house of Chief of Police, Miguel, and from there he was taken to a *bodega* of a Chinaman at Arsenal Street, Iloilo City where he was boxed and beaten until he promised to sign a statement; that Villaruz typewrote a statement which he was made to sign without reading the contents of the same; that after signing the statement he was taken to the City Hall where he was detained until September 13, 1951, when he was made to sign another statement in the morning the contents of which he

did not read nor were they read to him; that in the afternoon of the same day he was called to sign again another statement which was admitted by him as having been signed by him before deputy clerk of court, Logronio; and that he had never known Sausa.

The evidence for the appellant, Niño, corroborated by Manuel Ortega, which is also an *alibi,* is as follows: That on September 9, 1951, at 7:30 in the morning he was in Muelle Loney, Iloilo City, working as passenger contractor for the ferryboats to Bacolod City; that he remained in Muelle Loney until 12:15 in the afternoon and he had not gone to any other place; that he had not known Sausa personally; that on September 12, 1951, he was walking by the public market and he saw his *compadre,* Natividad, who called him and told him that he (Natividad) was maltreated by the policemen that he (Niño) was arrested while he was talking to Natividad as one of the suspects that beat Lustre; that he was not allowed to go home anymore and he slept in the office of the Secret Service; that at midnight he was awakened and asked to sign an affidavit or else he would be beaten; that he was given a blow and a revolver was pointed at him and that his head would be broken if he would not sign the affidavit and the barrel of a revolver was then poked on his ribs on account of which he promised to sign the affidavit provided he would not be maltreated; that he signed the affidavit without reading it nor the contents thereof read to him; and that in the afternoon of September 13, 1951, he was made to sign again another affidavit which he ratified before the deputy clerk of court, Logronio.

The court *a quo* rendered judgment "finding the accused guilty of frustrated murder, with one aggravating circumstance and in the case of Benjamin Niño and Sulpicio Natividad, with the mitigating circumstances of voluntary surrender. Uldarico Sausa is sentenced to suffer an indeterminate penalty of from 8 years and 1 day of *prisión mayor* to 14 years, 8 months and 1 day of *reclusión temporal,* with the accessories of the law. Benjamin Niño and Sulpicio Natividad are each sentenced to suffer an indeterminate penalty of from 6 years and 1 day of *prisión mayor* to 12 years and 1 day of *reclusión temporal,* with the accessories of the law. The three accused are furthermore ordered jointly and severally, to indemnify the offended party, Alfredo Lustre, in the amount of ₱4,500, without subsidiary imprisonment in case of insolvency, and to pay the costs."

The above-named accused appealed from the decision and they make the following assignment of errors:

1. The trial court erred in admitting Exhibits C and D, in convicting Sulpicio Natividad and Benjamin Niño on the strength of said exhibits, and in not acquitting them on the ground of the

insufficiency of the aforesaid exhibits, as the only evidence of the prosecution against the aforesaid accused.

2. The trial court finally erred in convicting Uldarico Sausa of frustrated murder, instead of serious physical injuries only.

With respect to the first assignment of error, the appellants, Natividad and Niño, contend that they should not have been convicted on the strength alone of their respective written statements, because they (Statements, Exhibits C and D) are "self-serving" and because the prosecution withheld the production of previous written statements allegedly made by them. The said statements cannot be considered "self-serving" evidence for the prosecution because they are written admissions of guilt by the appellants themselves, and as we understand it a "self-serving" evidence is the statement of a party intended to serve his own interest. (Moran, Commentaries of the Rules of Court, Vol. III, p. 62, 1952 Rev. Ed.) They were, therefore, properly admitted by the court *a quo*.

The appellants, Natividad and Niño, further contend that the prosecution had withheld the presentation of the previous written statements of the said appellants which might exculpate them. According to them, "the trial court owe(s) it a duty to demand *motuo-propio* for the production of the other alleged confessions in order to gain broader and more judicious perspective of the case. It was not quite prudent on the part of the defense to ask for the production of these alleged documents because it has no idea of their contents; and moreover, it entertains grave doubts if the City Fiscal would even produce them." (Appellants brief, pp. 14, 15.) It was more the duty of the defense rather than the court's to cause the production of the alleged written statements made by the appellants, Natividad and Niño, which were supposedly in the hands of the City Fiscal. But they refused to move the court *a quo* for the production of said written statements through legal process granted them by our law, on the ground that "it was not quite prudent on the part of the defense to ask for the production of these alleged documents because it (the defense) has no idea of their contents." In other words, the defense voluntarily desisted on second thought from venturing on a "fishing expedition".

Appellants Natividad and Niño further contend that they cannot be found guilty of their uncorroborated confessions. They allege in their brief (p. 16) that none of the witnesses for the prosecution testified against them. Such a contention is untenable, because even without some independent proof of authorship of the crime committed, the accused person making the confession can be convicted if the confession has been given voluntarily. (Rule 123, Sec. 14, Rules of Court.) The Supreme Court has said in the case of People *vs.* Batangan, 54 Phil., 834, that the

utility of the confession as a species of proof would vanish if it were necessary in addition to the confession, to adduce other evidence sufficient to justify conviction independent of such confession. And confession is presumed to be voluntary until the contrary is proved.

"The rule, therefore, as it stands now, may be stated thus: A confession is admissible until the accused successfuly proves that it was given as a result of violence, intimidation, threat or promise of reward or leniency. But this new principle in no wise impairs the general rule of jurisprudence which rejects any confession once shown to have been made voluntarily. (U. S. *vs.* Zara, 42 Phil., 308; People *vs.* Cabrera, 43 Phil. 64; People *vs.* Singh, 45 Phil., 676.) Involuntary confessions are uniformly held inadmissible as evidence by some courts on the ground that a confession so obtained is unreliable and by others on ground of humanitarian principles which abhor all forms of torture or unfairness towards the accused in criminal proceedings. When satisfactorily shown to be involuntary a confession stands discredited in the eyes of the law and is as a thing that never existed (U. S. *vs.* de los Santos, 42 Phil., 329; People *vs.* Nisishima, 57 Phil. 26)." (Moran, Commentaries on the Rules of Court, Vol. III, p. 99, 1952 Rev. Edition.)

The evidence shows that the confession of the appellants, Natividad and Niño, were given voluntarily, their declarations on the witness stand to the contrary, notwithstanding. They signed their respective statements and admitted the signatures thereon affixed as theirs upon their oath before the deputy clerk of court, Logronio. They could have told Logronio that they had been maltreated, forced and intimidated into signing their respective statements but they did not. We believe, therefore, that the allegation of force and intimidation put up by the appellants, Natividad and Niño, was an afterthought, which was more imaginary than real.

In the case of people *vs.* Cabrera, 46 Off. Gaz., 3702, 3704, 3705, the Supreme Court has said:

"El apelante repudia su confesión escrita diciendo que su firma fué obtenida por medio de amenazas, maltrato y violencia. Esta alegación carece de mérito. No estando apoyada en ninguna otra prueba fuera de la declaración del apelante, no puede prevalecer sobre el testimonio positivo del juez de paz al efecto de que el apelante firmó voluntariamente la confesión en su presencia. De ser verdad el maltrato y tortura a que, segun él, le sometieron los policias, el momento para el apelante de denunciarlo fué cuando le llevaron ante el juez de paz. No lo hizo, sin embargo. Por el contrario, firmó la confesión sin ningun reparo.

* * * * * * *

" . . . Por ultimo, el Juez Sentenciador que vió y oyó declarar a los testigos asevera que el apelante no tiene las trazas ni la apariencia de ún hombre pusilánima para que pudiera ser facilmente amonazado, intimidado ó acobardado por un simple sargento de la policía militar. No hemos hallado en autos ningún motivo para alterar o revocar esta conclusión de hecho del Juez. La circunstancia de que el acusado y apelante estuviera bajo la custodia de un policía cuando hizo la confesión no la hace inadmisable,

pues este hecho, por si solo, no demuestra que mediaron fuerza, amenaza e intimidación (E. U. *contra* Castro, 23 Jur. Fil., 68; Rex *vs.* Thorton, 1 Moody, C. C. 28; Underhill on Crim. Procedure, 249)."

In the case of People *vs.* Cruz, 73 Phil., 651, 652, our Supreme Court has stated:

"Upon its face, the confession by no means exhibits to any fair-minded man any sign of suspicious circumstances tending to cast doubt upon its integrity. It is replete with details which could possibly be supplied only by the accused. The narration reflects spontaneity and coherence which psychologically cannot be associated with a mind to which violence and torture have been applied. And the response to every interrogatory is so fully informative even beyond the requirements of the question, as to indicate that the mind of the appellant was wholly free from extraneous restraints. Objectively considered, therefore, we are satisfied that the confession is voluntary."

In the case of People *vs.* Marquez, 43 Off. Gaz., 1652, 1655, the Supreme Court has also ruled:

"Respecto de los actos de violencia e intimidación que se imputan a la policía en relación con la confesión extrajudicial de culpabilidad, no hay en autos prueba de que la imputación sea más de lo que no pocas veces los confesos de un delito se esfuerzan en alegar como expediente tardio y vano para corregir los efectos desastrosos de su irreflexiva sinceridad en los primeros momentos de espontaneidad y abandono. El apelante no acusa al policía Bautista, ante quien firmó la confesión, de haber tomado parte en los supuestos actos de tortura, per declara qhe cuando firmó el documento estaba medio descanecido (dizzy). Sin embargo, Bautista, cuya veracidad no está seriamente discutida, asegura en su testimonio que el apelante no había sido maltratado ni estaba desvanecido cuando confesó su participación en el atraco. No tienen ninguna importancia ciertas incongruencias que se señalan en las declaraciones de este testigo, quien en lo esencial de una versión fidedigna de los hechos a los cuales se refiere su testimonio."

In the case of People *vs.* Tandug, G. R. No. L–1765, XV Lawyers Journal 11, 13, the Supreme Court has stated:

"When the accused was brought to the justice of the peace court where he had full freedom to speak the truth, he voluntarily and readily ratified Exhibits A–1 and B, stamping his signature thereon, without any protest or reservation. He did not show or offer to show at any time to anyone any mark or injury on his body. Not only that; he pleaded guilty of the complaint on arraignment and did not produce any evidence, either his testimony or that of his witnesses whom he presented at the trial in the court of first instance. Could he with success claim now that he pleaded guilty and was prevented from making his defense by force and intimidation?

"While it is a common practice of law officers to resort to violence to extract confession, the method is not employed in all cases, and charges of maltreatment should be given credence only when supported by clear proofs. The settled rule is that a confession is presumed to be voluntary, and the burden of proof is on the accused who repudiates it, to show that it was made or obtained by undue pressure. (U. S. *vs.* Zara, 42 Phil., 368; People *vs.* Cabrera, 43 Phil., 64, 76.)"

There being no clear evidence that the confessions were obtained through force and intimidation, we hold that the first assignment of error is untenable.

With respect to the second assignment of error, the evidence shows that the purpose of the assult was not to kill Alfredo Lustre but merely to beat him in order to scare him (Exhibit C and D); and the injuries which he suffered required not less than 30 days nor more than 90 days of medical treatment and had incapacitated him to perform his customary labor for the same period of time. We, therefore, hold that the second assignment of error is well taken, and the appellants should have been convicted of serious physical injuries, penalized under article 263, paragraph 4 of the Revised Penal Code which provides that the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period shall be imposed, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

In view of the foregoing considerations, we are of the opinion and so hold that the three appellants are guilty beyond reasonable doubt of the crime of serious physical injuries instead of frustrated murder:

(*a*) Uldarico Sausa by direct participation with the aggravating circumstances of (1) in consideration of a price, reward or promise, (2) with evident premediation and (3) with treachery, and without any mitigating circumstances; and

(*b*) Sulpicio Natividad and Benjamin Niño by induction, with the aggravating circumstances of (1) in consideration of a price, reward or promise and (2) evident premeditation, and the mitigating circumstance of voluntary surrender.

The three appellants are, therefore, hereby sentenced to suffer each the penalty of from 6 months of *arresto mayor* to 2 years and 4 months of *prisión correccional*, to indemnify jointly and severally Alfredo Lustre in the sum of ₱4,500, with subsidiary imprisonment in case of insolvency, and to pay the proportionate part of the costs. With the modifications indicated above, the decision of the court *a quo* is affirmed.

It is so ordered.

Reyes, Pres. J., and *Ocampo, J.*, concur.

Judgment modified.

[No. 11381–R. May 11, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* SERAFIN CADILE Y ALFINZAR and SERGIO CRUZ DIEGO, defendants. SERAFIN CADILE Y ALFINZAR, appellant.

1. CRIMINAL LAW; THEFT; POSSESSOR OF STOLEN PROPERTY, PRESUMED AUTHOR OF THEFT.—According to our jurisprudence the possessor of property said to be stolen is presumed to be

the author of the theft if he fails to give a satisfactory explanation of said possession. (U. S. *vs.* Ungal, 37 Phil., 835).

2. ID.; ID.; CLEAR MANIFESTATION OF INTENTION TO RETURN OBJECT OF THE CRIME BEFORE DETENTION, EFFECT ON CRIMINAL LIABILITY; CASE AT BAR.—Even assuming that the defendants were really the thieves who intended to steal the galvanized sheets from their office, from the moment the intention of returning the sheets to the U. S. Military Port was clearly established, the accused ceased to be criminally liable for theft by reason of their desistance from carrying the crime to its final or purported consummation *before* they were detained by the civilian investigators.

APPEAL from a judgment of the Court of First Instance of Manila. Concepcion, *J.*

The facts are stated in the opinion of the court.

Gonzalo G. Padua for defendant and appellant.

First Solicitor General Ruperto Kapunan, Jr. and *Solicitor Adolfo Brillantes* for plaintiff and appellee.

FÉLIX, *J.:*

On and before April 20, 1954, Serafin Gadile y Alfinzar and Sergio Cruz Diego were employed as driver and laborer respectively in the 6203rd Motor Fool Squadron of the U. S. Military Fort. In this military installation there were kept galvanized iron sheets among many other government properties which were stored in an open space behind the office building.

Early in the morning of April 20, 1951, Francisco P. Mañgalonzo and Nicasio Estrella, civilian investigators of said organization, received confidential information that galvanized iron sheets would be stolen from the compound on said day and were instructed to watch out for the thieves.

At about 1:30 p.m. of that same day Cadile, with Diego sitting on his side, drove a 6 x 6 truck out of the military installation at the Port Area to dump the trash it contained at the North Harbor. Cadile and Diego were armed with a pass (Exhibit B) that authorized them to take the trash out and which they presented for inspection to the guards when they got to the gate of the compound. At that time the aforementioned investigators, accompanied by Isidro Gloria, Nicanor Santos, Nicasio Estrella, Guzmán and one Smith, who had posted themselves in a strategic place to watch for the vehicles that came out of said military installation, followed in two jeeps the truck driven by Cadile when it came out of the compound which instead of taking the short way, via Del Pan Bridge, to the North Harbor, went along a longer route through Bonifacio Drive, 11th Street, 13th Street, Katigbak Drive and P. Burgos to the Post Office where they stopped for a while and then proceeded on to Rosario, Binondo and San Nicolás streets. At the city dump Cadile and Diego

started to remove the trash from the truck, but without finishing this job they went back to their office. In going back to the U. S. Military Port they took the short way, via Del Pan Bridge, but they were stopped by the investigators before entering the gate of the military compound. Mañgalonzo immediately went up the truck and searched it and after pushing aside a superficial layer of the trash left in the truck, he found on the floor 140 galvanized iron sheets, valued at ₱476, which he retrieved from the truck and deposited in the yard behind the building of the Installation Office. Mañgalonzo then drove the truck and took Cadile and Diego to the U. S. Military Port where Nicanor Santos investigated them, but they refused to give any statements in writing. Cadile and Diego were then prosecuted for qualified theft in the Court of First Instance of Manila, and after hearing the court found both of them guilty as charged in the information and sentenced each of them to suffer the indeterminate penalty of from 4 years, 2 months and 1 day of *prisión correccional* to 8 years and 1 day of prisión mayor and to pay the costs. From this decision only Serafin Cadile y Alfinzar appealed, claiming this instance that he drove the truck full of trash outside the U. S. Military Port in good faith.

According to his version, at 8:30 in the morning of April 20, 1951, that is, before the dumping of the garbage, he went to collect his salary from the Finance Department, and upon his return to the truck it was already loaded, but as there was no laborer to help him unload the trash, he had to wait until 1:00 o'clock in the afternoon, when Sergio Cruz Diego arrived saying that he was the one assigned to accompany Cadile. When they got to the gate they presented the pass (Exhibit B) for inspection and then proceeded to the city dump at the North Harbor. They, however, did not go directly to the North Harbor because he (Cadile) wanted to pass by the Post Office to mail a letter to a friend in Bataan, and then continued their way to the North Harbor. Appellant further says that when Diego began throwing out the trash at the city dump, he discovered on the floor of the truck the galvanized iron sheets in question and asked him (Cadile) what to do with the same, to which appellant answered that they should return to the Port Area, which they did, and upon arriving at the Port Area they reported the matter to the military police, one of which was an American and the other a Filipino, who boarded the truck and counted the sheets. It was at that time that two jeeps with civilian plate numbers arrived, and when they noticed that the soldiers were counting the galvanized iron sheets, the civilian investigators arrested him and Diego and took them to the Provost Marshal. When they were asked where they intended to take the galvanized iron sheets,

they answered that they did not know that the sheets were in the truck.

There is no dispute that at the time appellant Cadile and his coaccused were arrested on account of this case, they were in possession of 140 galvanized iron sheets, for the theft of which they stand prosecuted herein, and according to our jurisprudence the possessor of property said to be stolen is presumed to be the author of the theft if he fails to give a satisfactory explanation of said possession (U. S. *vs.* Ungal, 37 Phil., 835.) Therefore, the main question for Us to determine in this appeal is whether or not the explanation given by appellant as to how he and his coaccused came to possess said 140 sheets of galvanized iron, is satisfactory.

Upon carefully weighing the evidence of the prosecution, we find that defendants' act in driving the truck from the gate of the Military Installation to the North Harbor, taking the long way and passing by the Post Office, may imply a violation of their duties as driver and laborer of the U. S. Military Fort, but it has absolutely nothing to do with the crime they are charged with, because it does not appear from the record that they did anything to dispose of the galvanized iron sheets in question, or even indicative that they knew that said sheets were in the truck.

It is true that when the defendants were at the city dumping place they did not finish their work of unloading the trash before returning to the Military Port, and the prosecution points this out as an indication of guilt, insinuating that the layer of trash was left just to cover and conceal the galvanized iron sheets; but we think that this circumstance alone is not by itself sufficient for conviction for two obvious reasons: firstly, because said intention to conceal is not shown by the evidence and is a mere conjecture without foundation, for it is not the necessary sequel of the fact from which it is inferred; and secondly, because it could be argued in favor of the defendants that said layer was what remained in the truck when they discovered the iron sheets and they were eager to go back with the truck in order to return them immediately to their office. There is no denial that they proceeded *with all the iron sheets* directly and through the shortest route to their office and this fact tends to support appellant's contention that they were not aware of the existence of the galvanized iron sheets in the truck when they left the U. S. Military Port on that day and, consequently, that they did not knowingly or purposely removed said sheets from the compound. Morover, there is no sufficient proof to show that the iron sheets in question were taken from said U. S. Military Port and that they belonged to the U. S. government.

But let us suppose for the sake of argument that the defendants were really the thieves who intended to steal said galvanized iron sheets from their office; even so, we would be of the opinion that from the moment their intention of returning the sheets to the U. S. Military Port was clearly established, they ceased to be criminally liable for theft by reason of their desistance from carrying out the crime to its final or purported consummation *before* they were detained by the civilian investigators.

Sergio Cruz Diego did not appeal from the verdict of conviction rendered against him, and although it may be inferred from his conformity with his sentence that the crime at bar has been committed, such inference cannot serve as a legal basis for the assumption that appellant Serafin Cadile y Alfinzar was one of the thieves.

After carefully considering the evidence on record, We are inclined to give appellant the benefit of the doubt and to find the explanation he gave of his possession of the aforementioned 140 galvanized iron sheets satisfactory.

Wherefore, the decision appealed from, in so far as defendant Serafin Cadile y Alfinzar is concerned, is hereby reversed and this appellant freely acquitted of the crime he stands charged herein, with costs *de oficio*.

Rodas and *Martinez, JJ.*, concur.

Judgment against defendant Cadile y Alfinzar is reversed and acquitted of the crime he stands charged herein, with costs de oficio.

[No. 11421-R. May 13, 1954]

MIGUEL BERNARDO, plaintiff and appellee, *vs.* CRISANTO VASQUEZ, doing business under the name and style FUNERARIA VASQUEZ, defendant and appellant.

1. COMMERCIAL LAW; EMPLOYER AND EMPLOYEE; SEPARATION PAY; ARTICLE 302, CODE OF COMMERCE, NOT REPEALED BY THE NEW CIVIL CODE.—The new Civil Code of the Philippines has not repealed article 302 of the Code of Commerce regarding separation pay of employees. In declaring the provisions of the Code of Commerce governing *agency* to be repealed, the Civil Code (Art. 2270) was evidently referring to articles 244 to 280 of the Code of Commerce, said articles composing section 1, entitled "Agency, of Title III of Book II of the latter Code. On the other hand, article 302 forms part of Book II, Title III, section 2, entitled "Other Forms of Commercial Commission—Factors, Employees, and Shop Clerks". These categories of commercial attendants could not have been intended as included in the term "agency" by the new Civil Code, in view of the absence of the element of personal trust and confidence that characterizes true agency relations. Finally, the new Civil Code requires notice for dismissal of house hold helpers (Art. 1698), and it would be inconsistent for it to dispense with the notice in dismissing commercial laborers and employees.

2. ID.; ID.; ID.; DAILY PAID LABORERS ENTITLED TO SEPARATION PAY.—The assumption that under article 302 of the Code of Commerce, laborers paid per day would not be entitled to separation pay is by no means justified by the text of the article, since it speaks merely of "cases in which the contract (of employment) does not have a fixed period; without requiring that the employee should be paid by the month or by the week (See Phil. Manufacturing Co., *vs.* National Labor Union, 48 Off. Gaz., No. 7, 2765).

3. ATTORNEY AT LAW; FEES; ATTORNEY'S FEES UNDER THE NEW CIVIL CODE.—Attorney's fees are recoverable even in the absence of stipulation, "in actions for the recovery of wages of household helpers, laborers and skilled workers" (par. 7, Art. 2208, new Civil Code.)

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the court.

Benigno P. Santiago for defendant and appellant.
Manuel Y. Macias for plaintiff and appellee.

REYES, J. B. L., *Pres., J.:*

Crisanto Vasquez, doing business under the name of "Funeraria Vasquez", seeks a reversal of the decision rendered by the Court of First Instance of Manila, in its Civil Case No. 16192, ordering him to pay his ex-employee, Miguel Bernardo, the following amounts: ₱150 as separation pay; ₱445 as overtime pay; and ₱200 as attorney's fees, as well as the costs of the proceedings.

Essentially, the evidence for plaintiff-appellee is that he was engaged as driver-mechanic on March 1, 1951 to repair jeeps and occasionally to drive the Funeraria hearse to and from the provinces, particularly Nueva Ecija and Bulacan; that his pay was ₱5 a day or ₱150 a month, working on Sundays and holidays; that his hours of work from March 3, 1951 were from 7 to 12 in the morning, and 1 to 7 in the evening; that he also brought corpses to the provinces some seventeen times, but was not paid for overtime in excess of the eight hours; that he was discharged on September 25, 1951, without notice, for which reason he also sought separation pay.

Appellant Vasquez disputed plaintiff's claims, and substantially asserted that Bernardo was only an "extra" (emergency) laborer working only when there were tasks for him to do, at the rate of ₱5 a day; that the working hours were from 7:30 to 11:30 a.m. and from 1:30 or 2 p.m. to 5:00 or 5:30 p.m.; that he employed other laborers for the night shift, and that if plaintiff ever stayed up to 7:00 p.m., it was not done in connection with the work but because he used to get "vales" on account of compensation and the payment was made at night; that Bernardo used to drive hearses to the provinces because he wanted to go to his hometown, San Miguel, Bulacan, to get foodstuffs; that on September 25, 1951, Bernardo was

reprimanded for not working, and Bernardo voluntarily quit, picking up his tolls and getting his pay.

The appellant's first two errors are directed against the finding of the Court below that there was overtime work by the appellee laborer. This is a matter of credibility that the trial Court resolved in favor of the appellee. We find no sufficient reason to disturb it, considering that the existence of overtime work appears corroborated by the admitted fact that payments on the laborer's "vales" were being issued only at around seven o'clock in the evening. If work really stopped at 5 or 5:30 p.m., as appellant contends, we see no reason for the delay in doling out the wages.

As to the statement of the appellee Bernardo that he employed an average of fifteen hours a day when driving the hearse car to the provinces, appellant's argument is that the road distance to Nueva Ecija or Bulacan would require 5 to 6 hours, at the most, per round trip. The argument is not convincing, for it stands to reason that a funeral hearse can not proceed very rapidly, the ordinary rate of travel being unseemly for a funeral *cortége*. Not only that, but the appellee could not be expected to just dump the corpses or coffins on arrival, as if they were so much freight, in order to accelerate his return.

The third assignment of error is addressed at the trial Court's finding that the employee is entitled to separation pay, appellant insisting that defendant quit his work voluntarily. We find no error in the trial Court's giving credence to the testimony of Manuel Bernardo as against that of appellant Crisanto Vasquez considering that: (1) appellant introduced Exhibit 1 in an effort to show that Bernardo was only an occasional laborer, but said Exhibit appears materially altered, the words "Pomasok bilang extra driver hindi permanente" (engaged as extra driver not permanent) being clearly written in a machine having a different design of typefaces from the rest of said Exhibit; (2) that the appellant Vasquez caused Bernardo (after the latter left his employ) to be arrested for stealing a starter, and later imposed as a condition for dropping the police charge that the present case be dismissed; and (3) even the words that appellant admits to have been levelled at Bernardo when the latter left ("If you think you do not have the initiative to work any more you better tell me" (t. s. n. Zapata, p. 13) constitute, for one accustomed to our ways of indirect expression, an actual, if veiled, dismissal.

We agree with the Court below that the new Civil Code of the Philippines has not repealed article 302 of the Code of Commerce regarding separation pay of employees. In declaring the provisions of the Code of Commerce governing agency to be repealed, the Civil Code (Art. 2270) was evidently referring to articles 244 to 280 of the Code of

Commerce, said articles composing section 1, entitled "Agency", of Title III of Book II of the latter Code. On the other hand, article 302 forms part of Book II, Title III, section 2, entitled "Other Forms of Commercial Commission—Factors, Employees, and Shop Clerks". These categories of commercial attendants could not have been intended as included in the term "agency" by the new Civil Code, in view of the absence of the element of personal trust and confidence that characterizes true agency relations. Finally, the new Civil Code requires notice for dismissal of household helpers (Art. 1698), and it would be inconsistent for it to dispense with the notice in dismissing commercial laborers and employees.

In his next assignment of error, appellant complains that the laborer had no "record or memorandum or any kind of note" to show his overtime work. Considering that for the most part, these laborers are semi-illiterate, the complaint appears unreasonable. It would be far more sensible to lay the blame for such dearth of records on appellant, who is a businessman habituated to the keeping of written records of transactions.

This appellant's Exhibit 3 should show that Bernardo received ₱150 on 30-day months and ₱155 on 31-day months does not, in our opinion, have much probative value, considering that its preparation was under appellant's control, and that said Exhibit 3 appears to be a carbon copy, the original of which is unaccounted for. Moreover, appellant's argument from this Exhibit 3 proceeds on the assumption that under article 302 of the Code of Commerce, laborers paid per day would not be entitled to separation pay; this assumption is by no means justified by the text of the article, since it speaks merely of "cases in which the contract (of employment) does not have a fixed period", without requiring that the employee should be paid by the month or by the week (see Phil. Manufacturing Co. *vs.* National Labor Union, 48 Off. Gaz. (No. 7), 2765.)

As to the award of attorney's fees, the same is authorized by paragraph 7 of article 2208 of the new Civil Code:

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> * * * * * * *
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> * * * * * * *

Finding no reversible error in the judgment appealed from, the same is hereby affirmed, with costs against appellant.

Reyes, Pres. J., Ocampo and *Pecson, JJ.*, concur.

Judgment affirmed with costs against appellant.

[No. 7286-R. May 22, 1954]

FELIPE CATIBOG and JULIANA ATIENZA, plaintiffs and appellees, *vs.* FRANCISCO RAZON, ET AL., BASILIO RAZON and HILARIA MIRANDA, defendants and appellants.

1. PLEADING AND PRACTICE; JUDGMENTS; PERSONS BOUND BY A JUDGMENT; CASE AT BAR.—It is elementary that a judgment binds not only the parties to a litigation but also their heirs and successors by title acquired after the action was begun. (Rules of Court, sec. 44, par. *b*). The validity of the donation and the ownership of the land having been put in issue and adjudged in favor of plaintiffs' predecessors in the first case, the appellants are barred from litigating it again, since they now represent the same interest as the defendant in that case (Chua Tan *vs.* Del Rosario, 57 Phil., 411; Martinez *vs.* Graño, 51 Phil., 287; Valdez *vs.* Pineda, L-3467, July 30, 1951).
2. DONATIONS; REDUCTION FOR INOFFICIOUSNESS; CREDITORS CANNOT ASK REDUCTION FOR INOFFICIOUSNESS.—The rule is explicit that the creditors can not ask for the reduction of donations made by their debtors on the ground of inofficiousness (Art. 655, old Civil Code.)

APPEAL from a judgment of the Court of First Instance of Batangas. Soriano, *J.*

The facts are stated in the opinion of the court.

Julio D. Enriquez for defendants-appellants.
Vicente Reyes Villavicencio for plaintiffs-appellees.

REYES, J. B. L., *Pres., J.*

Originally assigned to the Fourth Division, and later reassigned to the Third to secure prompt disposition thereof, this case involves a pauper's appeal from the decision rendered by the Court of First Instance of Batangas in its Civil Case No. R-2, the dispositive part whereof reads as follows:

"In view of the foregoing, plaintiff spouses Felipe Catibog and Juliana Atienza are hereby declared the absolute owners of the land described elesewhere in this decision, with the right to take possession of the same, and the defendants are hereby ordered to yield possession of said land to the plaintiffs, to pay the latter the amount of ₱100 representing the value of the fruits which said defendants perceived from said land since 1948, and to pay the costs." (Rec. of Appeal, p. 14)

There is no question that on February 4, 1929, Pedro Miranda, a widower 64 years old, made a donation *inter vivos* to Baldomera Atienza of a parcel of land described as follows:

"Situada en el barrio de Mantingain, del municipio de Lemery, Batangas, de 11,000 metros cuadrados, y linda al Norte, Ambrocio Perez y Norberto Catibog; al Este, Simon Atienza, hoy, antes barranco y Matea Castillo; al Sur, Crispulo Umali hoy, antes Pedro Miranda; y al Oeste, barranco y Lope Aquino, amillarando en ₱150, que es una parte del terreno, Tax No. 14334." (Rec. of Appeal, p. 11)

as evidenced by the notarial deed of donation executed on the date aforesaid by the donor and donee, who registered her acceptance in the same act and instrument (Exhibit B). The deed recited that the parties were to be married in 30 days, and after marriage, the land would become the property of the donee.

Marriage took place as contemplated, but was not blessed with children, and when the donee Baldomera Atienza died on January 31, 1947, she left no descendants nor ascendants, but only her husband (the donor) and her brother Simón Atienza and her three sisters Eleuteria, Eulalia, and Juliana, all surnamed Atienza.

On February 14, 1948, the four brother and sisters of the late Baldomera Atienza instituted a suit against the widower Pedro Miranda to vindicate ownership and recover possession of the land in question, as heirs of the donee, Baldomera Atienza, in Civil Case No. 4544 of the Court of First Instance (Exhibit A). Miranda defended by pleading that the donation was null and void because in making it, he had not reserved to himself in ownership or usufruct, the necessary property for his support, in violation of article 634 of the Civil Code of 1889. But the Court, on October 8, 1948, rendered judgment, declaring plaintiffs Atienza to be the owners of the land and ordering Pedro Miranda to vacate and restore possession thereof (Exhibit C). This decision having become final, execution issued and the Sheriff delivered physical possession to the Atienzas (Exhibits E, E–1).

On November 25, 1948, Simon, Eulalia, and Eleuteria Atienza donated their interest ¾ to Felipe Catibog, as per notarial deed Exhibit D. The remaining ¼ undivided interest remained in Juliana Atienza, wife of Catibog.

Pedro Miranda, upon the death of his second wife, Baldomera Atienza, had gone to live with his daughter of the first marriage, Hilaria Miranda, and her husband Basilio Razon, two of appellants herein, until he died on May 19, 1949. His relatives, the appellants herein, took possession of the land. For this reason, the present case was instituted against them by the spouses Felipe Catibog and Juliana Atienza on July 7, 1949 to reivindicate ownership and possession of the land. The defendants, in answer to the amended complaint (Rec. App., p. 8), reiterated the defense of nullity of the donation for failure to reserve enough property for the support of the donor, already pleaded by the latter in the former case; and further alleged that they had spent ₱2,000 for the support of the late Pedro Miranda, and claimed that this amount was chargable to the donated property. The trial Court rejected defendants' claims, stating:

"None of the above contentions of the defendants can stand the test of scrutiny. Admitting, for the sake of argument only,

that the land donated by Pedro Miranda to Baldomera Atienza was all the property that he had, and that he did not reserve anything for his support, still the said donation is not void, as claimed by the defendants, but only voidable. "A donation of all of the actual property of the donor or a part of it without reservation in fee simple or in usufruct is not void but voidable only." (Andrada *vs.* Sevilla and Veloso, 19 Phil., 442). And the said donation is not voidable in its entirely, but is merely inofficious and subject to reduction with respect to the excess. (Agapito *vs.* De Joya, 40 Off. Gaz. No. 17, p. 3526). But the said reduction may be made only during the lifetime of the donor, for the very obvious reason that the reduction would be for his support while still living. It is true that Pedro Miranda, when still alive, sought to strike down the donation, Exhibit B, but his efforts came to naught because according to the aforequoted decision of Judge Enriquez, Exhibit C, Pedro Miranda's claim had long prescribed. If Pedro Miranda, during his lifetime, had no more right to revoke the said donation, still less have the herein defendants any right to outlaw the donation in question after Pedro Miranda's death.

There is also credible testimony of record that the land donated by Pedro Miranda to Baldomera Atienza was not the only property he had, he having also raised pigs and cattle which he sold before his death, not to mention the house in which he and Baldomera Atienza used to live. Furthermore, it is conceded on all sides that Pedro Miranda, before his death, and the herein defendants, after his death, have always been in possession of the donated property, hence, the legitimate inference that Pedro Miranda used the proceeds from the said property for his support. The testimony of defendant Hilaria Miranda that she spent ₱2,000 for the support of her father Pedro Miranda is too shaky to be believed. Even if true, she can not charge these alleged expenses against the land in question that had long ceased to be the property of her father. Defendants' further stand that the decision against Pedro Miranda (father of defendant Hilaria Miranda) in Civil Case No. 4544 is not binding upon them runs counter to the familiar rule on *res judicata* that "The parties in the second case must be the same parties in the first case, or, at least, must be successors in interest by title subsequent to the commencement of the former action or proceeding, as when the parties in subsequent case are heirs." (Vol. I, Moran's Comments on the Rules of Court, p. 708)." (Rec. of Appeal, p. 13)

Thereupon, defendants duly appealed to this Court, assigning four errors as follows:

I

The lower court erred in holding that the donation, Exhibit D, of the property described in paragraph 1 of the amended complaint is valid and binding upon the appellants Basilio Razon and Hilaria Miranda;

II

The lower court erred in holding that the expenses inccurred by the appellants for the support of Pedro Miranda are not chargeable against the land in litigation.

III

The lower court erred in holding that the amount of ₱2,000 spent by the appellants Basilio Razon and Hilaria Miranda for the subsistence and support of their father Pedro Miranda is too shaky to be believed;

IV

The lower court erred in declaring the appellees Felipe Catibog and Juliana Atienza the absolute owners of the land described in paragraph 1 of the amended complaint.

The appeal must be dismissed. While appellants Basilio Razon and Hilaria Miranda were not parties in Case No. 4544, yet they, as heirs of Pedro Miranda, are privies of the latter, and as such they are concluded by the adverse judgment rendered therein. It is elementary that a judgment binds not only the parties to a litigation but also their heirs and successors by title acquired after the action was begun. (Rules of Court, sec. 44, par. *b*). The validity of the donation and the ownership of the land having been put in issue and adjudged in favor of plaintiffs' predecessors in the first case, the appellants are barred from litigating it again, since they now represent the same interest as Pedro Miranda, the defendant in that case No. 4544 (Chua Tan *vs.* Del Rosario, 57 Phil., 411; Martinez *vs.* Graño 51 Phil., 287; Valdez *vs.* Pineda, L–3467, July 30, 1951). It is, therefore, unnecessary to inquire into the legal merits, if any, of the claim that the donation was invalid. *Interest rei publicae ut finis sit litum.*

As to the claim of ₱2,000 allegedly spent for support of Pedro Miranda up to his own demise, we found no ground, and the appellants have not pointed out any reason, why this Court should set aside the finding of the Court below that this claim was not proved. The appellants' mere assertion that such amount is reasonable under the circumstances is not sufficient, for it is no proof that the amount was actually spent. But even if it had been in fact expended, it was pursuant to the legal duty to support a father, and it was a personal obligation of his daughter, appellant Hilaria Miranda, not of the heirs of his wife Baldomera Atienza, who were not related to him by consenguinity. No legal provision is called to our attention making such support a lien on any particular property. If at all, it should be a claim against the estate of the deceased Pedro Miranda, but not against owners of the donated property that ceased to be his since 1929, The rule is explicit that creditors can not ask for the reduction of donation made by their debtors on the ground of inofficiousness (Art. 655, old Civ. Code).

No issue having been tendered against the award of ₱100 as fruits for the years 1948, 1949, 1950, the defendants should pay for the subsequent years at the same rate.

The judgment appealed from is affirmed, with the sole modification that appellants shall pay ₱33 as damages for every year subsequent to 1950 that they remain in possession, until actual surrender of the land. No costs in this instance, this being a pauper's appeal. So ordered.

Ocampo and *De Leon, JJ.*, concur.

Judgment affirmed.